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THE

EXECUTIVE DOCUMENTS

OF THE

SENATE OF THE UNITED STATES

FOR THE

SECOND SESSION OF THE FIFTY-THIRD CONGRESS.

1893-94.

Volume 1.—Nos. 1 to 74, inclusive, except No. 19, parts 1 and 2, and No. 36.
Volume 2.—No. 19, parts 1 and 2, Coast and Geodetic Survey.
Volume 3.—No. 36, Proceedings of the Pan-American Medical Congress.
Volume 4.—Nos. 75 to 176, inclusive, except Nos. 97 and 119.
Volume 5.—No. 97, Des Moines River Land Grant.
Volume 6.—No. 119, Reports relating to Military Engineering.
Volume 7.—No. 177, Fur Seal Fisheries Arbitration.

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TO

THE EXECUTIVE DOCUMENTS

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53D CONGRESS, 2d Session. } SENATE. { Ex. Doc. 177, Part 14.

FUR SEAL ARBITRATION.

PROCEEDINGS

OF THE

TRIBUNAL OF ARBITRATION,

CONVENED AT PARIS

UNDER THE

TREATY BETWEEN THE UNITED STATES OF AMERICA AND GREAT BRITAIN CONCLUDED AT WASHINGTON FEBRUARY 29, 1892,

FOR THE

DETERMINATION OF QUESTIONS BETWEEN THE TWO GOVERNMENTS CONCERNING THE JURISDICTIONAL RIGHTS OF THE UNITED STATES

IN THE

WATERS OF BERING SEA.

VOLUME XIV.

WASHINGTON:
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1895.

FUR-SEAL ARBITRATION.

ORAL ARGUMENT

ON

REGULATIONS

BY

SIR CHARLES RUSSELL, Q. C., M. P.,
HER BRITANNIC MAJESTY'S ATTORNEY-GENERAL.

THIRTY-FIFTH DAY, JUNE 8TH, 1893.

Sir CHARLES RUSSELL.—Mr. President, it is with a sense of relief that I find myself approaching the concluding subject upon which it will be my duty to address this Tribunal. You, Sir, will have gathered from the arguments of my learned friends and myself that in our apprehension of the questions with which the Tribunal has to deal, this is the only one which deserves at the hands of this Tribunal serious consideration or which ought to give this Tribunal serious trouble. I wish, at the outset, to explain the position which my argument takes or proposes to take in the consideration of the general question. You, Sir, will have observed that in presenting the Case upon what has been called the questions of right, that I have had all along the most valuable and unstinted aid of my learned friend, Sir Richard Webster, and my other learned friends who are with me, and with the assistance which they were good enough to render to me, I took upon myself the main burthen of presenting fully and at length the case on the part of Great Britain relative to those questions of right. As regards the question of Regulations, I propose only to address the Tribunal upon some broad questions of principle which we submit ought to be borne in mind by the Tribunal in considering the question of Regulations and in deciding upon the plan which those Regulations should pursue. In that view you will perceive, Mr. President, that it becomes necessary at the very outset I should determine upon what hypothesis I am to consider the question of Regulations.

Am I to consider that question of Regulations as if the question of right were undetermined? Am I to consider the question of Regulations as if the United States were to be supposed to have legal rights such as are intended to be presented under the five questions of Article VI, or am I to approach the question of Regulations upon the supposition that those questions have been determined adversely to the contention of the United States? I need not tell you, Sir, what is the only hypothesis upon which we can argue, or pretend to argue, the question of Regulations at all. It is upon the hypothesis clearly and distinctly that this Tribunal has arrived or shall have arrived at the determination that, so far as legal right is concerned, the United States has none. I therefore shall argue the question as I conceive Article 7 of the Treaty contemplated that the Treaty should be argued, namely, upon the assumption that the United States has no legal property in the fur seal individually or collectively, and, in the next place upon the hypothesis that no right of the United States in regard to those industries so called upon the Islands is invaded by the pursuit of pelagic sealing. The 7th Article, as I conceive, suggests that that is the contingency contemplated by the Treaty itself it says:

"If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in, or habitually resorting to the Behring Sea, the Arbitrators shall then determine what concurrent Regulations", and so forth, "are necessary."

That then, Sir, is the hypothesis upon which I proceed to consider the question of Regulations.

I cannot better express myself in this regard than is expressed at page 159 of the British Counter Case, and with the permission of the Tribunal I will read some passages from that Counter Case. Itis necessary it is there said in chapter 9.

in approaching the consideration of the question of Regulations (if any are to be made) to recall its relation to the five points raised by the VIth Article of the Treaty, bearing in mind that it is only in the event of those five questions having been so determined as to render the concurrence of Great Britain necessary that the authority of the Arbitrators as to Regulations arises (Article VII).

What, then, does that determination involve? It involves the recognition of the proposition that Behring Sea is to be regarded as a sea open to the commerce and to the fishermen of the world, and that the United States have no exclusive right of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary 3-mile limit.

It follows that the rights and interest of the United States in fur-seals frequenting such islands do not differ from the rights and interests of any other portion of mankind, except in so far as the territorial possession of those islands by the United States gives to their nationals the exclusive right of capture in territorial waters, and the advantages derived from the fact that the seals congregate in large numbers on those islands, thereby giving the opportunity for their slaughter.

I stop there for a moment.

Therefore, to begin with, the question is to be approached and only to be approached, as we conceive upon this basis of fact that the only peculiar or special right which the United States have is the right which they possess *ratione soli*—the right that they possess by reason of the possession of the islands which gives them facilities for the capture of these animals *feræ naturæ*, but gives them no other right of any different character than that possessed by all mankind. They have the right to take them *ratione soli* exclusively on the Islands. They have the right to exclude anybody else from trespassing on that domain. They have the right to take them exclusively within the three mile limit and to exclude others from that zone but outside that zone, and on the high sea, the rights of all are equal and the Nationals or lessees of the United States Islands have no other greater or different right than that possessed by the nationals of any other Country on the face of the globe whose opportunities and whose interests may suggest them pursuing pelagic sealing upon the open sea.

Now if that be so, and it is upon that basis and upon that basis alone, that I and my learned friends will argue this question at all, two questions will arise, first what are the rules which you may make or which you can make in other words what is the extent of your jurisdiction and authority, and the next question is, what are the rules which in fairness and equity you ought to make. As to each of those questions I propose to say a few words.

The questions are, what is the extent of your jurisdiction as to rules, and next to what extent, in what direction onght you to exercise that jurisdiction. In other words, what can you do is the first question, and what ought you to do is the second question.

Now it is obvious that the first question, namely, the extent of your jurisdiction, depends on the Treaty. You can only exercise the jurisdiction that the parties have given you. The discharge of your duty, which you have taken upon yourself, is confined to and defined by the terms of that document under which or from which your authority springs. I am only concerned, Mr. President, to deal with one point upon the question of the extent of your jurisdiction, and that point is this. I will convey it to your apprehension in a sentence, in a moment,

so that you may more easily follow it, whether your jurisdiction, in fact extends beyond what has been called the area of dispute between the United States and Great Britain; in other words, whether your jurisdiction extends beyond Behring Sea. When I talk of the Behring Sea you will understand that I deal with that part of the Behring Sea east of the boundary line—the portion of that part of Behring Sea, east of the boundary line, being claimed by the United States at one time, and in one branch of their argument, as practically part of their territory ceded to them by Russia.

Senator MORGAN.—You are not speaking of the North Pacific Ocean.

Sir CHARLES RUSSELL.—Well, Sir, I do not at this moment use the phrase "part of the North Pacific," though Behring Sea is part of it. I speak of it as meaning the Behring Sea itself.

Now I wish before I deal with this question, and having made my point I do not intend to dwell upon it for reasons which will be apparent in a moment. I wish before I argue the point to meet the charge which my learned friend Mr. Carter felt himself warranted in making when dealing with the contention which is raised in the Counter Case and Argument on the part of Great Britain that the jurisdiction of this Tribunal was in fact limited to Behring Sea. My learned friend said (he did it with his usual courtesy, and he will understand that I am not making it a matter of complaint) that to so argue on the part of Great Britain was to convict Great Britain of insincerity in her desire to preserve the fur-seal species. My learned friend went on to say that the facts made it apparent that Regulations were needed outside Behring Sea and south of what has been called the Aleutian chain as much if not more than inside the area of Behring Sea itself. I meet my learned friend's charge of insincerity in the way in which it has been all along met. We have been (as correspondence, which I will not refer to in detail, has made apparent) from the first anxious so soon as the question of right was settled and out of the way to deal comprehensively with the question of Regulations in relation to the preservation of the fur-seal without limit as to any particular seas or parts of particular seas or islands. We were anxious to gain the co-operation of other great Powers who had an interest in this question. We were anxious that the scheme of Regulations should not be confined to the seas, but should extend to the breeding places of these islands where Regulations were at least as much needed as elsewhere, and given the conjunction of the Powers who were interested, and given authority to a Tribunal to deal comprehensively at sea and on land we have all along been willing, and we are now willing, to give the fullest authority to any Tribunal to deal with any question outside this Treaty. This is no new offer. It is to be traced in the correspondence of Lord Salisbury when he held the Office of Foreign Minister and from the consistent tone which he evinced there has been no departure by any successor in Office.

Senator MORGAN.—You said to deal with any question outside this Treaty. I suppose you meant outside the territorial limits—outside Behring Sea.

Sir CHARLES RUSSELL.—I did, Sir, I meant without any restriction at all there as to sea or land. I therefore meet my learned friends charge or suggestion of insincerity in this way, and indeed I might on my own part—not that I care much for the argument known as the *argumentum ad hominem*—retort upon the United States and their advisers, I do not doubt the personal sincerity of my learned friends at all, but if they were really representing the unselfish views which

those who instruct them profess in this matter, there would be, I take leave to say nothing derogatory to the position of the United States—nothing, at least, unworthy of its great position and authority in submitting as part of a great scheme the question of Regulations upon the Islands as well as the question of Regulations at sea.

Great Britain has not thought it unbecoming, the United States has not thought it unbecoming its importance and dignity to submit to this Tribunal the regulation of important rights in the open sea; and I could see, therefore, nothing derogatory to the United States in their submitting also to an impartial Tribunal an adjustment of this question which should embrace the Islands also. I admit, because I wish, at least, that my argument should be clear, that there is no authority under this Treaty in this Tribunal to enjoin, as authoritative relations, any scheme or system of management upon the Islands themselves as what I may call a directly enforcible act of this Tribunal. I shall presently, however, have to submit in another connection, while they have not that power directly, they have the power indirectly; and I shall submit reasons why that indirect power should be exercised.

Senator MORGAN.—I do not suppose that anybody contends that there is any self-executing power submitted to this Tribunal for establishment or decision? It must be done by the assistance of some Government?

Sir CHARLES RUSSELL.—Quite so; no doubt, that is a consideration I shall, of course, deal with when I come to the suggestion at a later stage.

With that preliminary statement, I come back to the question; Is the jurisdiction of this Tribunal as to Regulations restricted to the area in dispute, namely the eastern part of Behring Sea?

Now, Mr. President, you will recollect that, in my former argument upon the question of right, I respectfully insisted upon, in argument, the meaning which I conceived was to be given or ought to be given to Question 5 of Article VI. You will recollect that I then insisted that that was not only, as Article VII showed it to be, a question of exclusive jurisdiction claimed by the United States, but I endeavoured to show that it was a question of exclusive jurisdiction of the same character as was put forward in the preceding four Questions, namely a question of exclusive jurisdiction in the eastern waters of Behring Sea, founded upon the contention that those eastern waters were part of the territory ceded by Russia. I am not going to repeat that argument because it would be but a mere repetition of the argument that I then addressed, that would be equally applicable to the subject-matter that I am now speaking about; and I will content myself by asking the Members of the Tribunal to take a note of the fact that that argument is to be found beginning on page 945 and between that page and page 956 of the Print of the argument. That is my oral argument.

Now, there is no doubt in the world that Lord Salisbury, as I have already intimated, in some of his correspondance was contemplating and was, I may add, recognising the advisability of the consideration of Regulations outside Behring Sea; or, perhaps, to put it more correctly, not limited to the eastern waters of Behring Sea. I am not going, for the reasons I have given because I speak of the thing without going into minute details, to refer the Tribunal to the correspondence; that will be dwelt upon by minds coming freshly to the consideration of this question, my learned friends, Sir Richard Webster and Mr. Robinson. But I wish to say, though that is so, it will also be found that that was in connection with the subject-matter to which I have

already referred; namely, the contemplation of a scheme to which not only the United States and Great Britain should be parties, but to which, among others, Russia should be party, and to which it was hoped that Japan might be a party; and it was in that view, and that view only, that a comprehensive scheme embracing the whole subject-matter of nationals of all Powers as to whom it could probably be predicated they would or might embark in pelagic sealing, it was in that connection that that wider reference of his was made.

But, in justification of what I am submitting, there is one passage, and one passage only, to which I must refer. It is a short passage, but an important one. I will not refer to the original source from which the passage is taken, but I will read it from the place in which it appears in my Argument addressed to this question. It is at page 946-947; and it is the communication of Mr. Wharton. It is a letter of the 4th of June, 1891, and is to be found at page 306 of the United States Appendix, Volume I:

The fourth clause of the proposal of Her Majesty's Government, limiting the taking effect of the *modus vivendi* upon the assent of Russia, presents what seems to the President an insuperable difficulty, as adherence to that suggestion by Her Majesty's Government will, in his opinion, prevent the conclusion of any agreement, and will inevitably cause such a delay,

and then I observe that the object of Sir Julian Pauncefote was, by including Russia, to have an extension of the *modus vivendi* so as to prohibit the killing in other parts of the Behring Sea westward of the line of demarcation; and this is the way that suggestion is met by Mr. Wharton, and this is the passage in the letter:

I am also directed to remind you that the contention between the United States and Great Britain has been limited to that part of Behring's Sea eastward of the line of demarcation described in our Convention with Russia, to which reference has already been made, and that Russia has never asserted any rights in these waters affecting the subject-matter of this contention, and cannot, therefore, be a necessary party to these negotiations, if they are not now improperly expanded. Under the Statutes of the United States, the President is authorized to prohibit sealing in the Behring's Sea within the limits described in our Convention with Russia, and to restrict the killing of seals on the islands of the United States; but no authority is conferred upon him to prohibit or make penal the taking of seals in the waters of Behring's Sea westward of the line referred to or upon any of the shores or islands thereof.

Now, I beg your respectful attention to this concluding passage:

It was never supposed by any one representing the Government of the United States in this correspondence or by the President, that an agreement for a *modus vivendi* could be broader than the subject of contention stated in the correspondence of the respective Governments.

I need not say that the subject of that correspondence was exclusively the eastern waters of Behring Sea. There is another passage in that letter, a little lower down, on the same page in the book in which the letter is set out *in extenso*, which runs thus:

This he would very much regret,

(that is to say, regret that the matter should go off)

and he confidently hopes that a reconsideration will enable Lord Salisbury to waive

(I repeat the word *waive*)

the suggestion of Russia's participation in the Agreement, and the inclusion of other waters than those to which the contention between the United States and Great Britain relates.

Senator MORGAN.—What is the date of that letter?

Sir CHARLES RUSSELL.—June the 4th, 1891; the Treaty itself being concluded in February, 1892,—the Treaty itself was signed on the 18th

of December, 1891, and the ratification signed at Washington February, 1892; and ratifications exchanged on the 7th of May, 1892.

General FOSTER.—The Agreement was signed in December.

Sir CHARLES RUSSELL.—I have just said so.

General FOSTER.—No; you used the word "Treaty", I think.

Sir CHARLES RUSSELL.—You mean they were put together, and not in one document before? That is quite right.

Now I seriously submit, Mr. President, that in view of that correspondence in June 1891, from which I submit there has been no departure up to the time of the Treaty, that the actual area in dispute—the only subject matter to which the contest and correspondence related, were the eastern waters of Behring Sea and the eastern waters of Behring Sea only. In the same argument to which I have already given you the reference I also pointed out how the *modus vivendi* in the April of the following year, 1892, supports this contention. I pointed out by article V the question of damage or claim for compensation by the United States on the one hand if its rights should be affirmed by Great Britain, and, on the other, if the United States rights should not be affirmed, was confined to the abstaining from the exercise of the right of taking seals in Behring Sea, and did not extend beyond Behring Sea, and in view of this conjunction of circumstances, I submit that up to this time—in the correspondence at least—it is demonstrable that both parties to these negotiations were *ad idem* as to what was the matter in contest between them, and that was Behring Sea and Behring Sea only. After this correspondence and when we get to March 1892—I think it is the only other reference that I shall have to make—there is a letter from Mr. Wharton to Sir Julian Pauncefote at page 350 of the first volume of the Appendix to the Case of the United States, in which he says:

> I am directed by the President to say in response to your two notes of February 29th, and March 2nd, that he notices with the deepest regret the indisposition of Her Majesty's Government to agree upon an effective *modus* for the preservation of the seals in the Behring Sea, pending the settlement of the respective rights of that Government and of the Government of the United States in those waters and in the fur-seal fisheries therein.

Then follows this very explicit passage:

> The United States claims an exclusive right to take seals in a portion of the Behring Sea, while Her Majesty's Government claims a common right to pursue and take the seals in those waters outside a three-mile limit. This serious and protracted controversy it has now been happily agreed shall be submitted to the determination of a Tribunal of Arbitration, and the Treaty only awaits the action of the American Senate.

Now leaving this to my learned friends, approaching this matter as they will do with completely fresh minds, because they have not discussed this as I did in discussing the true construction of question 5, I pass on with one or two observations, which indeed become more pointed now that we have heard the suggested scheme which I will not at this moment characterise, gravely presented by the Agent of the United States in the person of my friend General Foster, who proposes forsooth a scheme without limit as to time, not for the regulation of rights upon the high seas, but for the extinction of rights upon the high seas and without qualification, or without reservation going down as well as I followed it, for I have not yet read it to the 35° of latitude. So that the scheme is from the Arctic Ocean. My learned friend, Sir Richard Webster, will trace the line of demarcation.

[Sir Richard Webster did so]. So that while the area in dispute was Behring Sea and the question whether we were there outside the ordi-

nary territorial zone of three miles, and deprived of the general right of fishing which we claimed as belonging to all mankind without reservation—my learned friends upon the supposition that the concurrence of Great Britain is necessary in Regulations, and that therefore Great Britain has rights involved propose a scheme of Regulations which practically mean very much worse for British interests or the interests of Canadian sealers than if we had never entered into any contest or treaty at all upon the question of right.

Let me point out and assume that Great Britain had chosen to say, "Well, we will not trouble to contest whether Russia did or did not assert and exercise rights prior to the time of the cession of Alaska—we will not trouble to discuss whether those rights were recognized or conceded by Great Britain—we will not trouble to discuss whether the phrase "Behring Sea" was included in the Pacific Ocean—we will not trouble to discuss whether all the rights that Russia had did not pass unimpaired to you—we will not trouble to discuss if you had rights giving you property or protection in fur seals frequenting Behring Sea: let the whole thing go by the board; can any body doubt what the result would be? It would be simply and solely an assertion of the territorial jurisdiction in Behring Sea, not exceeding one inch outside the three-mile limit. Therefore the proposition is now advanced, as I understand from my hasty hearing of it—it is one which puts Great Britain and her colonists in an infinitely worse position than the one they would have been in if the question of right had not been raised at all.

Now, reserving to my learned friends the right to enforce by further arguments this important point, I pass now, and I assume, contrary to my submission which I hope will be seriously and gravely canvassed by the Members of the Tribunal—without admitting for the purpose of what I am about to say that the Tribunal has—only for the purpose of argument do I admit it—authority outside as well as inside Behring Sea—upon that hypothesis the question will then arise, which is the second question to which I adverted, what Regulations ought in fairness to be made and to what extent and in what manner, with what limitations, and on what conditions ought that jurisdiction of the Tribunal to be exercised both inside and outside Behring Sea.

Again I say that this question is to be approached as I suggested I was endeavoring to approach it upon the basis that except rights as territorial owners of the Islands the United States or its lessees or its nationals have no right differing in kind or degree from the rights of the nationals of Great Britain, in other words the Canadian Colonists or indeed the nationalists of any other Power. In that condition of things simply the sense and spirit of equity in each member of the Tribunal will go with me in saying that if that be the true and just basis upon which to regulate, the rules to be laid down must be just rules, marked by considerations of equity and must have regard to the fact that there are rights equal in degree and of the same character—rights of fishing in the open sea—possessed by the subjects of Great Britain, just as they are possessed by Citizens of the United States.

Now, Mr. President, when I come a little closer to the consideration of what the Regulations ought to be, I find myself under this difficulty. I find that such a cloud of prejudice has been sought to be raised upon this subject of pelagic sealing that it is very difficult for this Tribunal until it is sought at least to dispel some portion of that prejudice to approach the consideration of the question of Regulations with unprejudiced and impartial minds, and indeed apart altogether from any prejudice

that might be engendered by the string of vituperative epithets that has been hurled at the pelagic Sealers. It is important to arrive at some definite conclusion, if one can, as to what is in truth the part which pelagic sealing has played in what is called the depletion of the seals in and resorting to Behring Sea because of course until you have to some extent realized with some approximation at least to accuracy what is the true measure of any mischief to the race of fur-seals caused by pelagic sealing you will be without at least some of the data absolutely necessary to assist you in determining what rules regulating sealing ought to issue from this Tribunal.

Senator MORGAN.—As I understand, you insist that the Tribunal has no right to establish Regulations to operate outside the Behring Sea. It is scarcely worth while to argue a question of that kind.

Sir CHARLES RUSSELL.—If you, Mr. Senator, will tell me that you accept that view, I will proceed at once, but I cannot assume that you, much less the other Members of the Tribunal will do so.

Senator MORGAN.—Your insistence is that this Tribunal has no jurisdiction to make any regulations for pelagic hunting outside Behring Sea.

Sir CHARLES RUSSELL.—Yes, that is my first.

Senator MORGAN.—That is the attitude of the British Government.

Sir CHARLES RUSSELL.—That is my first proposition.

Senator MORGAN.—Is that the attitude of the British Government.

Sir CHARLES RUSSELL.—I do not quite know what that means, Sir. That is the argument. I submit.

Senator MORGAN.—As representing the Government.

Sir CHARLES RUSSELL.—I am here in the character in which I have all along appeared.

Senator MORGAN.—If it is denied that this Tribunal has any jurisdiction to establish Regulations for pelagic hunting outside Behring Sea, then another very important question would arise which, of course, we have to determine upon our own responsibility, whether we can enter upon that question.

Sir CHARLES RUSSELL.—Upon which question?

Senator MORGAN.—As to the power of this Tribunal to regulate pelagic hunting outside Behring Sea.

Sir CHARLES RUSSELL.—You have to consider that undoubtedly; you have to consider the extent of your authority. I submit one view to you which you may not accept. I do not at all—far from it—mean to suggest that the question is not free from very great difficulty.

Senator MORGAN.—It is a debatable question.

Sir CHARLES RUSSELL.—I do not suggest or mean to suggest the contrary; but the difficulty does not arise in my mind from the tone of the correspondence, but from the terms of the Treaty and the provisions in Article VII, with reference to what waters they shall extend over. I do not find any logical difficulty in reconciling the portions of the water in the Behring Sea over which they shall extend, but I have felt bound to argue the question on another branch of the case already, on the assumption that the Tribunal may not agree with the view I am submitting, because, of course, I only submit the view as Counsel to the judgment of the Tribunal which has the responsibility of determining and authoritatively determining them; and I must, of course approach the matter alternatively, and I was on the second branch of it, approaching it on the alternative that my contention was wrong, and not one that would be accepted by the Tribunal.

The question was, what regulations, in and outside of Behring Sea, they adjudged fit to make. That is the question to which I addressed

myself, and I was going to address myself first of all to the point that it was necessary for the two-fold object of removing prejudice and also of trying to get a measure, if I could, of the extent of mischief which was properly and truly to be attributed to pelagic sealing, and to examine briefly some of the leading facts in relation to that branch of the question.

As I pointed out, it is not possible for the Tribunal, without examining these facts and coming to some conclusion upon them, to comply with the condition set out in the Treaty, or to give effect to the provisions of the Treaty itself.

Now, let me, at this stage before I proceed because it may save a little time, proceed to some brief comments on the Treaty itself. The preliminary recital on page 1 states that, the two Governments.

Being desirous to provide for an amicable settlement of the questions which have arisen between their respective Governments concerning the jurisdictional rights of the United States in the waters of Behring's Sea, and concerning also the preservation of the fur-seal in or habitually resorting to the said sea, and the rights of the citizens and subjects of either country as regards the taking of fur-seal in or habitually resorting to the said waters.

Then comes the operative part of the Treaty which provides that:

The questions which have arisen between the Government of Her Britannic Majesty and the Government of the United States concerning the jurisdictional rights of the United States in the waters of Behring's Sea, and concerning also the preservation of the fur-seal in or habitually resorting to the said sea, and the rights of the citizens and subjects of either country as regards the taking of fur-seal in or habitually resorting to the said waters, shall be submitted to a Tribunal of Arbitration.

Then in Article VI are the questions of right.

Then in Article VII is that which deals in the question of Regulations:

If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in, or habitually resorting to, the Behring Sea, the Arbitrators shall then——

that is to say in that event——

determine what concurrent Regulations outside the jurisdictional limits of the respective Governments are necessary, and over what waters such Regulations should extend,——

I need not read the rest of it.

Therefore, what the Tribunal have to consider, upon the hypothesis which I am now presenting, is, what regulations——what concurrent regulations——are necessary for the proper protection and preservation of the fur-seal?

It will be observed, therefore, and I might as well, as my attention has been drawn to it, make the observations in this connection, although I had intended to reserve them till a little later period——it will be observed, therefore, that it is not regulations for the protection of the fur-seal in the interests of the United States——it is not for the protection of the fur-seal so that the United States shall be entitled or in a position to kill the greatest possible number upon their islands—it is not even regulations that shall keep the fur-seal up to the highest normal condition of equilibrium which it might arrive at in a set of natural conditions where there was no artificial interference by man.

It is not that—it is the preservation of the fur-seal, and it is the preservation of the fur-seal for and in the interests of no one power, the subjects of no one power, or the citizens of no one power—it is the preservation of the fur-seal.

Now what part has pelagic sealing, in fact, played in this matter? The Tribunal will not have failed to observe that all through the written arguments, and all through the oral arguments, of my friends, that it is hardly an exaggeration to say that this has been their tone: not only, as my friend Mr. Robinson so clearly and pointedly mentioned to-day, that pelagic sealing is a moral wrong, and claimed that pelagic sealing is *hostes humani generis*, and the rest of it, but they have assumed that every seal, or almost every seal, that a pelagic sealer killed was a female seal; and they have assumed almost that every female seal that they killed was either a seal carrying its young (which it was about to deliver), or a female seal which had delivered its young which it was then engaged at the time of its slaughter in nurturing. It is hardly an exaggeration to describe that as the argument advanced by my friends.

Now let me point out some broad considerations. I do not stop to notice—for I have already in another connection referred to that—that whatever else may be said against pelagic sealing it has not yet, in the history of the world, been found guilty of extermination of the race of fur-seal in any part of the globe—that in no part of the globe where fur-seals were found formerly in great numbers and where they have now ceased to be, is there extinction attributable to pelagic sealing—indeed it is clear that if pelagic sealing and pelagic sealing alone were pursued, that there would be no need for Regulations at all, for the object of this Treaty, namely, the preservation of the fur-seal, because the past history of pelagic sealing has shown that in that which is its congenial element, the sea, nature has furnished the seal tribe with facilities to escape capture—it has enabled them to resist the attacks of man upon the high sea.

It is no exaggeration, to use the language of the British Commissioners rather ridiculed by my friend, Mr. Coudert when I say—and I adopt the language, for I think it is true—that pelagic sealing does give the seal what they call a "sporting chance" for its life, whereas, killing on the Island—knocking it on the head with a club, gives it no chance whatever. Therefore, we start with this, that it is not pelagic sealing that renders Regulations necessary at all for the preservation of the fur-seal. The fur-seal in the past has survived and in all human probability, as far as one can judge, will continue to survive and withstand the attacks of the pelagic sealer carried on as pelagic sealing necessarily is carried on in the native element or the more congenial element, at least, of the fur-seal. I do not stop to point out also the fact that it is admittedly the historical and most ancient form of the pursuit of the fur seal. I do not stop to dwell on the distinction that my friends seek to draw between what they call fur sealing where the comparatively untutored Indian with canoe and spear pursued the fur-seal, and compare it with the introduction of what my friend, Mr. Carter called the destructive agency of civilization in the shape of arms of precision and in the shape of schooners and appliances better adapted for success in that class of enterprise.

Well then, if we are right that pelagic sealing is not that which makes or calls for the necessity of Regulations standing alone, what is it that does call for the necessity of those Regulations? It is the killing on sea *plus* the killing on land; and, therefore, it does become important to consider what has been the relative effect of those two means of pursuit at sea and on land, and which had the most dire effect upon what has been called the depletion of the fur-seals in and frequenting Behring Sea?

Senator MORGAN.—That appears to be the question of indiscriminate killing, whether on land or sea.

Sir CHARLES RUSSELL.—In another connection as I have shown, and I shall have again to show, that although the United States claim was for discriminately to kill upon land, that is not a well-founded claim.

Senator MORGAN.—I am not speaking of the claim of the United States; I am speaking of the fact that it results in the destruction of the seal species; and the point is indiscriminate slaughter.

Sir CHARLES RUSSELL.—I do not care, Sir, whether it is indiscriminate or discriminate,—one need not dwell upon that. They are slaughtered. Whether you can call killing on the Islands discriminate or not, it has led to the depletion.

Senator MORGAN.—I am speaking of the killing of seals in the Southern Hemisphere as well as in the Northern. Has not the destruction of the seal species in the Southern Hemisphere resulted from indiscriminate slaughter?

Sir CHARLES RUSSELL.—On land, it has.

Senator MORGAN.—Or on the sea either.

Sir CHARLES RUSSELL.—No, on the contrary.

Senator MORGAN.—No matter where.

Sir CHARLES RUSSELL.—No. On the contrary there has been no instance whatever of any killing which it is even alleged had affected seal life in any of the southern portions of the globe or anywhere else, so far as I know attributed to pelagic sealing. No, Sir.

Senator MORGAN.—That may be the better method; but the question still recurs whether the loss of seal life in the Southern Hemisphere and in the north is not due to indiscriminate killing, whether on land or at sea.

Sir CHARLES RUSSELL.—At present I am dealing with pelagic sealing. I am endeavouring to see what are the crimes properly to be attributed to pelagic sealing; and in this connection dealing with this concrete case, what part pelagic sealing has played in the depletion of the heard of the seals frequenting or habitually resorting to the Behring Sea.

Now my learned friend Mr. Carter in dealing with this matter put forward this argument. It is to be found at page 81 of the United States argument in print I think, and also I think in my learned friend's argument—I have not the page at this moment—orally delivered. It was to this effect: a great part, said my learned friend—and said truly—of the seals killed by pelagic sealers, are females and thereupon he went on to say that being females that necessarily caused a diminution of the stock and a lowering of the birth-rate of the stock below the normal point which it would otherwise naturally reach. I want to point out, with great respect to my learned friend, that that is not correct; because it would assume that the female killed had produced no young at all, and would produce young if it had not been killed. Let me remind the Tribunal and remind him that according to the evidence it is stated that each female produces in the course of its normal life, assuming that it escapes the great dangers to which it is exposed from natural causes, from 11 to 14 pups. It is put as high as 14.

Senator MORGAN.—12 is an average?

Sir CHARLES RUSSELL.—Assume 12 to be an average by all means. My learned friend will see at once that if the particular female that has been killed is one that has produced even two pups, the killing of that

particular female does not reduce the stock at all, because she has more than replaced herself by the production of her two pups; and if the entire production in the course of her life is to be fixed, as you, Mr. Senator Morgan, suggest, at an average of 12 pups, the probability is, taking the same average, that when she meets her death at the hands of the sealer she has produced six pups, and therefore much more than replaces herself in the stock from which she is taken.

And indeed my learned friend will see that his own argument leads to this—I will say it, but say it respectfully to him, because it is the word that occurs to me—leads to this hopelessly absurd result. The killer whales who are one of the great agencies of destruction of the fur-seal have been going on, a natural enemy of the fur-seal ever since the fur-seals were, sparing neither age nor sex, not descriminating between female and male, killing therefore a large number of female seals. According to my learned friend's argument, if that argument were well founded, the killer whales must have long since exterminated the whole tribe of seals altogether. My learned friend's argument would only be good if he could establish that the females that were so killed were females that had not done something to replace themselves in the stock, to fill their own places in the stock, because it is only in that case in which they would have had any permanent effect upon the stock at all. Besides my learned friend loses sight of this fact which I think it is important to bear in mind, that the evidence now establishes—that after the breeding seals have got to the Pribilof Islands and after the time when according to my learned friend's views, the great family of the seals frequenting Behring Sea had got into the neighborhood of that Sea there are observed large masses of seals that never apparently go regularly to those islands if they go at all at long distances from the islands, at distances west and north of the islands and at distances south of the Aleutian chain and away from Behring Sea altogether, that at the very time that, according to their theory, the great family of seals were gathered around and upon the Pribilof Islands. What were these composed of? Many of them, we do not doubt, were composed of barren females who, not going to the islands, would go to waste—it is no exaggeration to say—but for the pelagic sealer. That class embraces others, for instance young males that are not led to go to the islands by any sexual instincts such as attracts them at a later period; females not attracted by any sexual instinct, which only affects them at a later period; and old seals which are considered unworthy of notice by those who kill the seals upon the islands because they have reached a stage at which their skins are not the most marketable, the best for the market being from three to four or five years of age. These are all classes of seals which may be dealt with without interfering so as to inflict any permanent injury upon the stock of the fur seal and which in large part, at least, would probably go to waste and be of no use for any human purpose whatever unless the pelagic sealer was allowed to deal with them.

Senator MORGAN.—Sir Charles, in that connection—I hope you will pardon me for calling your attention to it—the statements of a good many witnesses in this case would seem to indicate that every seal, a year old or any other age, is impelled by its natural necessities to resort to the land at some period of the summer during which its coat is changed; and that that necessity is just as imperious as any instinct of the animal in reference to its propagation. So that it is open to argument, to say the least of it, whether or not every seal does not every year resort, under the necessity of an instinct that it cannot avoid, to the land for the purpose of shedding its coat.

Sir CHARLES RUSSELL.—Well, Sir, I beg most distinctly, but respectfully to say there is no evidence which warrants any such conclusion; and I submit on the contrary so far from there being any evidence to warrant that conclusion that the evidence is the other way; because the evidence is that seals that do go to land become and are found stagey at a certain portion of their pelage in a certain period of the year, but at the very same period of the year seals are being taken by pelagic sealers, and on being taken pelagically are found not to be in that stagey condition at all. But further, as that has been mentioned, may I ask you, sir, to note—I did not intend even to give the reference—the evidence as to the scattering of large numbers of seals during the breeding season when, according to the contention of my friends, the whole family are in and about the islands, as set out in the second volume of the Appendix to the British Counter Case, page 27. There is set out there in summary a body of evidence of a great number of persons, speaking to different times and to different parts of that whole vast extent of ocean, showing that it is impossible to arrive at the conclusion which you have been good enough to suggest as one to be discussed, that the seals do go each year necessarily to land. Indeed, we have the admissions in the evidence of Mr. Bryant, who was I think a Treasury Agent on the Pribilof Islands, to the effect that when the female pup leaves the island it does not return to the island in its first year; that it comes to the island in the third year to deliver its first pup. As the question has been challenged I should just like to refer you to the passage where that appears.

In his Monograph of North American Pinnipeds, pages 401, 402, after speaking of the pups Mr. Bryant says:

"At this stage the female pups leave the island for the winter, and very few appear to return to the islands until they are three years old."

There is other authority to the same effect; but I cite that as being a witness called on the part of the United States.

But we have means of getting much closer to this matter and of determining what is the true measure of responsibility to be cast upon the pelagic sealers what is the correct measure or the approximately correct measure at least, of the effect of pelagic sealers, upon the race of fur-seals in these parts.

Now, Mr. President, there are three distinct dates given in various places by witnesses called on the part of the United States as the date at which decrease was first noticed on the Pribilof Islands. Those three dates are 1887—some of them give—1879—but the United States argument fixes 1884 as the first date when any significant decrease was noticed; and that is what is now suggested as the date upon which they fix.

My learned friend, Mr. Coudert, on page 655 of the print of his oral argument, takes the latter date and gives the go-by to the statement of some of the witnesses, to which I shall incidentally hereafter refer, fixing the noticeable decrease as early as 1877 and 1879. On page 655 Mr. Coudert says this:

From 1870 to 1880 it was one of increase. Of course it is not absolutely and mathematically possible to establish when increase ceased and stagnation commenced and decrease took its place; but speaking of the question, with such information as we can get from persons who are able to express an opinion, that is the estimate that we submit to the court increase to 1880; stagnation from 1880 to about 1884; and subsequently to that the decrease which it is conceded on all sides exists and now threatens extermination.

I do not know that that last statement is to be taken as an admission; but so my learned friend puts it.

We have a means of assisting the Tribunal to what is the true measure of the injury done by pelagic sealing; and in order to explain it, I will take the liberty of presenting, or asking the Tribunal to take, one of these tables which has been prepared for the purpose of presenting this. I would remind the Tribunal of this; there are certain tables found in the United States volume, A, B, and C, I think they are. These three maps will be found at page 352 of the United States Case. I am not going to trouble you, Sir, with a detailed examination of this; but it is absolutely necessary that I should explain what it means. If you will take "male Seals, diagram", facing page 352, you will see, Sir, that that purports to set out what would be the natural condition and distribution of a collection—I will use the word "herd" for brevity—of male seals numbering 40,025; and you will observe that there are different colors there to indicate the different divisions of these animals.

The first column, which is colored green, and which is framed upon the basis of an annual number of ten thousand male pups being born. You will see the figure "I" at the bottom of that column. There is a series of figures, 1, 2, 3, 4, 5, 6, 7, 8. You see the numbers, Mr. President?

The PRESIDENT.—Yes.

Sir CHARLES RUSSELL.—Those figures at the bottom indicate the ages which the seals have attained; and you will see, therefore, that upon the assumption of 10,000 male pups born in one year, that of those 10,000.

The PRESIDENT.—Pups, not male pups.

Sir CHARLES RUSSELL.—This is entirely conversant with males, Sir. There is another dealing with females. That of 10,000 male pups born in the year, only 5,000 survive to the next year; because you get the number which survive to the next year by following the column at the base of which is the figure I until you find it crosses the line. You will see, therefore, it goes up to the point of 5,000. If you have appreciated what I have been endeavoring to describe, I will pass on.

What that shows, therefore, is this: assuming that their calculation is correct—probably approximately it is correct—that from natural causes one half of the pups born disappear, prey to accident, prey to the killer whale, prey to epidemic, prey to any cause you like; but to natural causes is to be attributed the fact that 50 per cent of the pups born in any one year disappear during that year, and only 50 per cent survive to be yearlings. That is the only fact I wish, in this connection, for the moment to beg you to carry in your mind.

That being so, we have prepared a table in which we have taken the total number of seals pelagically killed from 1871 to 1878, and then going on to 1879, 1880, 1881, 1882, 1883, 1884, 1885, and we have proceeded upon the principle which I am now about to explain to you. We have assumed that every seal pelagically killed was a female seal, was not a barren female seal, but was in fact a pregnant female seal. Now, let us see how the figures work out, even on that violent hypothesis; because it is admitted by my learned friends that a certain percentage of the pelagic catch are old seals, females that are barren, females that are past bearing, and male seals whose skins are of comparatively little value for market purposes if killed upon the islands.

From 1871 to 1878—although I do not seek to dwell upon that, because it is going too far back—the number periodically killed was 2,000. The figures upon which I base these observations are to be found set out in the report of the British Commissioners, figures

which my learned friends have themselves adopted as indeed being more favorable to their contention than the figures set out in their own volumes.

Mr. CARTER.—We do not concede the accuracy of those figures.

Sir CHARLES RUSSELL.—No, no; I am not saying you do. But you have referred to them, and you have recognized the fact, as it is the fact, that they are figures which are larger than the figures that you yourself put forward.

Mr. CARTER.—Only in some particulars.

Sir CHARLES RUSSELL.—They will be found at page 207 of the British Commissioners' Report. I quite admit—I wish not to be misunderstood on this relation, or in any relation—I quite admit that all this is subject to discount because until we come to comparatively recent years the figures are not a very reliable guide. I quite admit also that an addition, and a not inconsiderable addition, is to be made to these figures by reason of what has been called the loss of seal life at sea, namely, loss in respect to seals which are shot at, which may be mortally wounded, but which sink and which cannot be recovered. The figures therefore are open to these criticisms. But in reference to such criticism, I have to observe that there is a very wide divergence between the views put forward by the witnesses on the part of the United States and those put forward by the persons actually practically engaged in pelagic sealing, as to the amount of loss in that way occasioned—so wide a margin of difference, indeed, between the two, that one looked about for some explanation of it; and I think the explanation is to be found in this: that the witnesses called on the part of the United States appear to have assumed that when a charge of the gun was fired at a particular seal, and that seal was not caught, that that was to be treated as a seal that had been wounded and was lost. I may call attention to the evidence cited in Professor Elliott's report, in which he cites a great number of instances of that kind, for he is very strong against pelagic sealing; and when you come to examine the instances that he cites, he does not mention them as instances where there is any reason to suppose the seal lost was a seal that had been mortally wounded at all.

Now, taking these figures, Sir, and presenting them to you; taking a later year than 1878, the amount pelagically killed in 1880 was 4,800; in 1881, 6,000; in 1882, 12,000; and I stop at 1882.

Mr. FOSTER.—It is about half of what the American Commissioners report in their table.

Sir CHARLES RUSSELL.—I do not think that is ad rem to what I am now upon.

Mr. FOSTER.—You say we adopted your figures.

Sir CHARLES RUSSELL.—Will you give me the reference?

Mr. FOSTER.—Page 366, just following the maps that you are using.

Sir CHARLES RUSSELL.—Do they give any figures after that?

Mr. FOSTER.—Oh yes; each year.

Sir CHARLES RUSSELL.—I thought our figures were more favorable.

Mr. FOSTER.—On page 366 you will see that in 1879 it is 12,500.

Sir CHARLES RUSSELL.—I will just look at this. Yes; I see some of them are more favorable.

Mr. FOSTER.—Take, for instance, up to 1878.

Sir CHARLES RUSSELL.—I will examine these later; but for the present I will take the ones that I am upon. It will not materially interfere with the point I am submitting. I think it will not be found to materially interfere.

What I was going to show is this: I will take the year 1882, where the figure given by the British Commissioners is 12,000; and I stop at 1882 for this reason: the pup born in 1882 would be a yearling in 1883, would be a two-year-old in 1884 and would be a three-year-old in 1885. Therefore, indeed, I ought properly to stop in 1881. That is to say, no effect of the killing of females in 1881 could be felt upon the number of killable seals until the year 1884. That is to say, a pup in 1881 is a yearling in 1882, a two year-old in 1883, a three-year-old in 1884, and is killable, in his prime, from 3 to 5 years of age. Therefore the effect of the killing of female seals could not tell upon the number of killable males, or either sex, for that matter, until 1884, or the third year afterwards.

I have assumed for this purpose the figure given in the case by the British Commissioners. They put the figure in 1881 at 6,000. The American Commissioners put it at double that. Therefore you may take it either one way or the other. It will not, I think, materially affect the matter. If it is 6,000, there are 6,000 pups born, which is a very violent assumption—6,000 gravid females, which, if not killed, would have born 6,000 pups, of which 3,000 alone, because the sexes are equal, would have been males, and therefore would, in the year 1884, if the mother had not been killed, have come into the class of killable males in 1884, and would have been in the class of killable males from 1884, when it was 3 years of age, up until it was 5, or later.

Now, of those 3,000 male pups supposed to have been lost because their mothers were killed in 1881, how many survived to reach two years of age? According to the figures given by the United States in the diagram to which I have referred, 960 only. How many would reach three years of age? 720 only. Double, treble, quadruple the amount of pelagic killing; and you get to a figure comparatively insignificant and wholly inadequate to account for or even go any substantial way to account for the decrease which it is said was so noticeable in the year 1884, according to Mr. Coudert's argument, and following the printed argument put forward on the part of the United States.

Therefore I say, take any set of figures you please, starting from 1881, and taking their contention to be that the decrease was markedly noticeable in 1884, that could not have been noticeable until the pups had got to the age when if they had been interfered with they would have been in the killable class, beginning with 3, and rising up to 5, 6 and 7 years of age.

We have other ways also of testing this matter. One specific accusation made against pelagic sealing is this; and they say that having found this specific accusation to be capable of support, in one particular set of years, that it may be equally true, and a cause of the death of the pups in previous years. That is to say, that in the year 1891 there was found to be upon the islands a large number of dead pups, dead, as they say, from examination after death, because they were starved, the starvation, as they allege, being attributable to the fact that their mothers were killed in Behring Sea and so they were deprived of their natural nutriment, causing the wholesale death of these pups, which was manifest upon the island.

The first observation one has to make in relation to that is this: that it will be found that the whole of those deaths of pups in any noticeable degree in 1891, were found on St. Paul's Island alone, not on St. George. I need not point out that if the death of those pups was attributable to the killing of their mothers by pelagic sealing, that you must have found corresponding indications of death of pups equal or proportionately upon both islands. I think that will not be disputed.

But not only that, but the evidence further establishes the fact that the death of pups was found to be confined to particular rookeries on that particular island of St. Paul, again showing that if the death of the pups in 1891 had been attributed to the killing by pelegic pursuit of the mother they would have been found to be distributed over both the islands and upon the rookeries of each of the islands, where as it was found confined to one island, and only to the rookeries on that island. But in the next place, and conclusively on this point, the evidence establishes, and I will read it to-morrow morning that the same thing was to be found existing and to the same extent in the year 1892, when there was no pelagic sealing at all in Behring Sea.

It follows from these facts which I have mentioned, and which I will make good tomorrow morning, that this charge of this enormous death which occurred in these two years to pup-life upon the Pribilof Islands, was due to pelagic sealing, will be found to be entirely without support.

Lastly, there is this extraordinary comment; they now get a number of witnesses, Aleuts and others, who make affidavits that they had noticed deaths of pups in previous years which they connected with pelagic sealing and with the killing of the mothers at sea, which they say began to be serious in 1884, and went on increasing in 1884, 1885, 1886, 1887, 1888 and 1889. And yet, wonderful, to relate, in no official Report is there any reference to that fact; and although Professor Elliott was there in 1890 for the purpose of examining and reporting upon the whole of the question, not one of the Witnesses upon the Island ever drew attention to this question of the death of pups in any way suggesting directly or indirectly that it had anything to do with pelagic sealing at all. The result is, his Report is entirely silent on the question.

Senator MORGAN.—You do not dispute the fact that the pups died?

Sir CHARLES RUSSELL.—No; on the contrary, the British Commissioners appear to have been the very first to call attention to the fact. There was a large number of dead pups in the neighbourhood of the Rookeries.

Senator MORGAN.—How do they account for the death?

Sir CHARLES RUSSELL.—I will read tomorrow morning what is said about it.

The PRESIDENT.—If You please.

(The Tribunal then adjourned till to-morrow morning at 11,30 o'clock.)

THIRTY-SIXTH DAY, JUNE 9TH, 1893.

Sir CHARLES RUSSELL.—Mr. President, I was yesterday endeavouring to make clear what a very insignificant part pelagic sealing had played in the depletion of the seal stock at the date at which the United States have fixed, the year 1884, as the year when the marked decreased was observable in the young males. The argument is still stronger if one refers to the year 1879, or to the year 1877, at which dates other witnesses speak of large noticeable decreases; because in those earlier years pelagic sealing was less than in later years. For my purpose 1884 is sufficiently strong.

I referred yesterday to the figures of the British Commissioners which I was under the impression, as far as the number of seals killed, was more favourable to the case of the United States than those of their own Commissioners; but I find I was not correct in that. Mr. Foster was good enough to point out to me at the time that in earlier years it is not so; but for the purpose I was discussing the distinction is hardly worth entering upon. What I had in my mind was that in earlier years the number of vessels engaged in pelagic sealing was larger when given by the British Commissioners than that given by the United States Commissioners. That was the source of my error. I will not go into elaborate calculations of figures; but I wish the Tribunal to grasp one or two facts which are put forward by the United States and which we assume for the purpose of the illustration I am now upon.

According to the table of mortality to which I yesterday referred, it will be apparent that the United States treat the mortality in the first year of seal life as amounting to 50 per cent. That will not be disputed; the tables show that. They also show what is the mortality between the ages of one and two, and between two and three, and so on; and I wish, therefore, in a sentence to show how those figures would work out on the supposition that 1,000 male pups are born in one year. Of that 1,000 male pups, 500 disappear from natural causes. If there was no pelagic sealing at all, natural causes will occasion the disappearance of 50 per cent., or 500 out of that 1,000. So that of 1,000 male pups born on the Islands, 500 re-appear as yearlings; 320 re-appear as two years of age; and 240 only of three years.

Now bearing that fact in mind if you take the largest figure of the pelagic catch suggested by the United States Commissioners although those figures are (if I chose to stop to make it) subject to some discount and criticism, yet it will be apparent that to occasion the marked decrease which is said to have been manifest in 1884—if you multiplied—if you double or quadruple the pelagic sealing you cannot account for the depletion which it is alleged was then observed. Now they have sought to establish the gravity of the charge against pelagic sealing in another way, and it was to that point I was adverting when the Tribunal rose yesterday evening, namely, they say we are able to specifiy a particular year in which there was an abnormal number of deaths of young pups, not by the killer whale, but by some causes which operated

upon them on the islands, because their dead bodies were found upon the islands and from that fact they then proceed to argue and cite the opinions of a number of persons upon the islands all I think without exception Aleuts, or nearly all, and they say we attributed this enormous death of pups, for it was a very large death indeed, there being no cause to which to assign it, to the fact that the mothers of these pups were killed at sea—that the pups were left without their natural sustenance and so died.

Now if they could establish that it would undoubtedly be a very grave and important fact. But do they?

I refer in this connection to the British Counter Case, page 213, where the matter is gone into. On page 212 the fact is stated, and then there is the reference to the British Commissioners' Report which deals with this matter. It begins at the bottom of that page.

The Commissioners then show, by reference to dates in detail, that the excessive mortality, when first observed, had occurred at a time too early in the summer to be explained by the killing of mothers at sea; and point out that, although further deaths of young occurred at later dates, there appeared every reason to believe that the whole resulted from some one cause, which had extended from the original localities, and had become more general.

The Commissioners do not regard the available evidence as sufficient to enable them definitely to determine the cause of the mortality in 1891, but suggest the following as among probable causes:

a. Disturbances connected with the collection of "drives," in which nursing females were included, which animals, though eventually spared, did not succeed in rejoining their young.

b. Disease of an epidemic character.

c. Stampedes and over-running of the young.

d. Raids upon the rookeries specially affected.

I shall have a word to say about the raids on the rookeries a little later. Then they proceed to observe this which I submit is practically conclusive against the view suggested.

The circumstance that the mortality observed in 1891 was confined to St. Paul Island, and was not found on the neighbouring Island of St. George, is in itself sufficient to indicate that it cannot be attributed to the killing of seals at sea. All the witnesses cited in the United States Case in respect to the mortality in this year speak of its occurrence on St. Paul Island only.

Now surely, if I rested here, that would be an answer to the suggestion that it was caused by pelagic sealing, because it is impossible to suggest with any show of reason or of probability that the seals captured by pelagic sealing only came from St. Paul's Island and that a proportion of them did not also come from St. George's Island. But not only that—they go on to show that it was confined to particular rookeries even upon St. Paul's Island itself. So much for the year 1891. But we have got still further, and subject to the better opinion and the more dispassionate opinion of the members of the Tribunal, what I submit is a conclusive answer to the suggestion, namely, that in 1892, when there was practically no pelagic sealing in Behring sea, where there may have been 300 or 400 or 500, seals, killed at sea—when the *modus vivendi* was in full operation, we have the very same mortality occurring and manifesting the same features. Now it does, therefore, with great deference to my learned friends and those who put forward this argument, seem to me impossible to maintain that thesis in connexion with the death of pups in 1891 and 1892. That latter matter in 1892 is dealt with in the first volume of the Appendix to the British Counter Case, pages 145 to 148, and if my learned friend would be good enough to read it for me, I would ask him to do so.

Sir RICHARD WEBSTER.—The causes that led to the destruction of pups on the breeding islands are, so far as they have been noted by me—

(*a.*) The wandering away of the young seals from the vicinity of the breeding-grounds, and subsequent failure to find female seals from whom they can obtain milk. This seldom occurs where a harem is situated between a cliff and the water, or backed by rocky steeps, as at Lukannon rookery on St. Paul Island, and parts of North rookery on St. George Island. Pups can most easily lose themselves when on such rookeries as Polavina, Reef, or Upper Zapadnie on St. Paul Island, and Zapadnie on St. George Island. At these places they frequently wander a short distance to the rear of the occupied rookery-ground, and are soon lost, especially if boulders lie between them and the breeding-ground. A pup's confusion is naturally much greater at such places as Sea Lion Point or at Reef rookery, where, on going but a short distance inland, cries of seals can be heard from both sides of the point. Two or three pups so lost were seen by me every time I visited Reef rookery, and seldom with strength enough to move more than a few yards, if at all. These pups of course die, and are, with few if any exceptions, dragged away and eaten by foxes. While scattered dead pups were always to be seen on the open ground between the rookeries on Reef Point, none that had been dead more than a few days were ever noted, though partly-eaten carcasses were not infrequent, so that the number of carcasses seen at any one time includes but a small part of the whole number that have died.

During the months of July and August a great many females were watched as they came from the water, and although in a few cases they were seen to go to the extreme back of the occupied rookery-ground, none were seen to go beyond it.

(*b.*) Many pups lose their lives when stampedes occur, and many others when bulls dash among the breeding females and their young to prevent the escape of a female from the harem.

The scattered dead pups that are to be seen on all rookeries have been destroyed in either of these ways.

(*c.*) A few pups probably lose their lives in the surf, or by being dashed upon rocks, but the number must, under ordinary circumstances, be very small. As early as the 18th July, and on many occasions afterwards, pups were watched while in the water close to the shore, and though they were often thrown with great force against the rocks, no pup was ever seen to receive the slightest injury. These causes of death to young seals were noted by me, but are obviously insufficient to account for the great mortality among the pups on Polavina and Tolstoi rookeries.

While standing beside the camera at Polavina rookery on the 22nd July I counted 143 dead pups; they were of the same size as the living pups near them, and exhibited no sign of having died of hunger, nor did it appear that they had been crushed to death in a stampede, as those that could be seen were at or near the limit of the rookery-ground. No estimate could be made of the number of dead pups that were lying on this rookery, as the seals lay so closely together on its southern and eastern slopes that but a small part of the breeding-ground was visible. Professor Everman (a naturalist on United States Fish Commission steamer "Albatross"), who was with me at this time, and who counted 129 dead pups, thought, with me, that if so many were to be seen at the outer edge of the rookery-ground, the whole number must be very great, and about a month later (20th August) I had ample proof that this was the case. I revisited Polavina rookery on this date with a native, Neh-an Mandrigan. This man speaks and understands English very well, and was at this time on his way to Northeast Point to take charge of the guard-house there. A great many dead pups were lying at the south end of the rookery, nearly or quite as many as were to be seen on Tolstoi rookery. They were lying on a sandy slope between the water and the rocky ledge that separates the lower from the higher parts of this rookery-ground, and were rather more grouped together than at Tolstoi, from 10 to 100 lying quite close together, with spaces from 5 to 10 yards square between the groups. There were individual dead pups scattered everywhere over this rookery as on all others, but on that part of it referred to above the number was very great, and the ground on which they were lying was quite deserted by living seals. They extended as far as could be seen along the rookery, but as only the front sloping to the south could be seen, the number beyond the point to the northward could not be estimated. It was at the south end of this rookery that the British Commissioners report having seen a few hundred dead pups in 1891. Photographs taken the 5th August show this ground with the breeding seals still upon it, but many dead pups may also be seen. The native Neh-an Mandrigan was asked how he accounted for so many dead pups; he replied that he thought they had been killed when the old bulls were fighting, but a few minutes later said that he was mistaken, that their mothers must have been killed at sea, and the pups have died for want of food. He at this time told me that he had never seen so many dead pups on any rookery before. He had seen those on Tolstoi rookery in 1891, but had not visited that place in 1892.

Dead pups were first noticed by me on Tolstoi rookery the 19th August, though photographs taken by Mr. Maynard on the 8th August, while I was on St. George

Island, show that at that date there were nearly, if not quite, as many of them on this rookery as there were ten days later.

At the time I first noticed the dead pups I counted over 4,000, but they lay so closely together that it was impossible to judge what proportion of the whole number was seen. I was told by the Treasury Agents on the island, and have no reason for disbelieving their statements, that when this rookery was carefully examined late in 1891 as many or more dead pups were found among the rocks or other parts of the rookery as were on the open space, and seen and specially remarked upon by the British Commissioners in 1891. This being so, it is reasonable to assume that such would be the case again this year. The dead pups noticed by me were on the same ground on which those seen last year were lying, but were scattered over a larger area, and in much greater numbers.

I accompanied the British Commissioners when they inspected Tolstoi rookery in 1891, and the date of my visit to that rookery this year coincided with their visit to it last year. Depending upon my memory alone, I had no hesitation in deciding that there was a greater number of dead pups at that place in August this year than at the same date in 1891, and a comparison since my return from the islands of the photographs taken during the two seasons proves that this is undoubtedly the case.

The pups when I first saw them appeared to have been dead not more than two weeks, and nearly all seemed to have died about the same time. Very few were noted that were in a more advanced state of decomposition than those about them, and the dozen or so that were seen were probably pups that had died at an earlier date, and from some other cause than that to which this unusual mortality among the young seal, is to be attributed.

The photographs taken on the 8th August show that at that time there were several groups of seals hauled out on ground on which the dead pups lay, but on the 19th August it was almost entirely deserted by the older seals. This rookery was revisited on the 21st August, and at this time an estimate was again made of the number of dead pups. A large band of holluschickie on their way from the water to the hauling-ground at the back of Tolstoi rookery had stopped to rest on the ground on which the pups were lying and hid a part of them, so that on this occasion a few less than 3,800 were counted. On the 23rd August I again visited Tolstoi rookery in company with Assistant Treasury Agent Ainsworth, Mr. Maynard, the photographer, and Anton Melavedoff, who is the most intelligent native on St. Paul Island, and has charge of all the boats and store-houses belonging to the Company. This native acted as boat-steerer at the time the British Commissioners visited Tolstoi rookery in 1891, and that I might learn his opinion regarding the relative number of dead pups for the two years 1891-92, I asked him to accompany me on the occasion referred to above. When asked whether there were as many seals in 1892 as in 1891, he replied: "More; more than I ever saw before." I, at the time, asked Mr. Maynard to pay particular attention to what was said, and he has since made an affidavit to the above effect, which is appended to this Report.

Sir CHARLES RUSSELL.—Let that be realised, and see what the force of that is in 1892, when pelagic sealing was prohibited, when there was no pelagic sealing; and, in corroboration of the fact that there was very close vigilance, will you refer to the bottom of page 147 where Mr. Macoun goes on to state this.

Whites and natives on the island were unanimous in saying that the mother of the pups found dead on the rookeries had been killed at sea, and that their young had then starved.

That is a strong opinion against us they say that the mothers had been killed at sea and thereupon the pups starved; but what is the answer? Mr. Macoun goes on to say.

During the months of July, August, and September I had frequent opportunities of conversing with the officers of nearly all the ships stationed in Behring Sea, both those of the United States and of Great Britain.

You understand that ships of both nations, Sir, were policing the sea at that time.

And all agreed that it was not possible for a schooner to have been in and out of Behring Sea in 1892 without being captured (see statement in Appendix (C.) of Captain Parr, the Senior British Naval Officer stationed at Behring Sea).

Then Mr. Macoun proceeds.

The cruises of the various ships were carefully arranged by Captains Parr and Evans, and so planned that no part of Behring Sea to which sealing-vessels were likely to go was left unprotected. Her Majesty's Ships "Melpomene" and "Daphne",

and United States Ships "Mohican", "Yorktown", "Adams", "Ranger", "Rush", and "Corwin", were engaged in this work. No skins worth taking into account were found on the small vessels that were seized, and most of those they had on board were doubtless taken outside Behring Sea, so that to whatever cause the excessive mortality among these young seals is to be attributed, sealing at sea can have had nothing to do with it in 1892.

My learned friend reminds me that the United States number for that year is 560.

The PRESIDENT.—Do you exclude the effect of the catches out of Behring Sea, because there were very great catches out of Behring Sea?

Sir CHARLES RUSSELL.—Obviously one must because you recollect, Sir, the argument is, and, we think the well founded argument, that these pups are born on the Pribilof Islands. Their case is that during the period of nursing the pups, the mothers go some distance no doubt from the Pribilof Islands, as they suggest. We shall consider that at a later stage in another connection; but I find no suggestion of nursing mothers going outside Behring Sea. You will see that that is an answer, Sir.

The PRESIDENT.—Yes, that is an answer.

Sir CHARLES RUSSELL.—Now, lastly, I have to dismiss the subject with this observation; whether the decrease is stated to be in 1877, as some say, or in 1879 as others say, or in 1884 as the United States now say, I have to put this to the Tribunal; if this theory of mortality in the pups being caused by the death of the mothers at sea is well-founded, you would expect that opinion to have been expressed somewhere or other between 1879 and 1890, or 1891 or 1892—you would have expected to find that theory put forward somewhere or other by some official or other. Now, I will call upon the United States, when their time comes, through my learned friend, Mr. Phelps, to show any report suggesting that as a cause till the later period when the matter is practically, so to say, in litigation between the parties.

Nay more, in 1890, when Mr. Elliott is sent to the island for the purpose of reporting upon the whole condition of the islands, and of the seal race, is it conceivable that if this had been in the minds of responsible persons on the islands during his visit in 1890, that depletion was largely caused by the death of pups, and the death of pups was caused by pelagic sealing, that that would not have been stated to him, that he would not have tried to find out the cause for himself, and yet we have the fact that from the beginning to the end of this most careful and elaborate report of his, there is not a suggestion of the kind. What makes that the more remarkable is, it is not merely a kind of official report, but he has appended to his report the observations which, from day to day, and from place to place, he records in his diary, and reproduces that as an appendix to this report of his, yet there is an entire absence of any suggestion as is now put forward. I submit, therefore, without any hesitation, Mr. President, that it is demonstrable that pelagic sealing could not have accounted for the sudden and great and marked depletion of the seal race which is said to have existed.

Now what have we against all this argument? Absolutely nothing except the affidavits or depositions or statements of certain Aleut witnesses, natives on the islands and others, made in 1892, I think—either 1891 or 1892, but I think in 1892, and if the opinion had been present to the minds of these persons at that time, it is inconceivable that they would not have made those statements to some of the official representatives of the company or of the United States. I am speaking of witnesses on the spot. I am not shutting my eyes to the fact that

there are numerous statements of persons who express as a matter of opinion that the deaths are caused in this way and that way, but these are persons who simply find themselves unable to find any definite cause for this marked mortality.

I therefore, come to the next point, if pelagic sealing is shown to be utterly inadequate to account for this depletion for this attack upon the sealeries we must look for the causes of that depletion and the results of that attack in other directions. In what other direction? Well, I say we find the case carefully and elaborately explained in the report of Mr. Elliott. I do not forget that my learned friends have made some efforts to discount the value of Mr. Elliott's testimony. I am sure the Tribunal will judge by the value of that report, by its intrinsic merits, and by the view that they take of the contents of that report, whether or not they are hasty opinions, or whether or not they are not careful results of a conscientious man trying to accumulate all the information that he can on this subject. So far as that report is a matter of Mr. Elliott's opinions let my learned friends criticise it as they please; but they will not be heard, and they cannot be heard when he is recording facts. They cannot suggest that their own official, a highly trusted official, and frequently employed, is coming to invent statements against the interests of the country to which he belongs and against the United States Executive Government which employs him. It is the case, as I said to-day, of a witness called for the plaintiff, who turns out to be a most valuable witness in the suit for the defendant. They are now saying to him as Balak said to Balaam,

I called thee to curse mine enemies, and thou hast altogether blessed them.

It is not correct to say he has altogether blessed them, because it is one of the facts which goes to show the *bona fides* of this gentleman that he is as strong against pelagic sealing as anyone can be in the interests of the United States, but having gone to the islands with the preconceived idea that pelagic sealing was the root of the mischief, he is met by circumstances and by facts which compel his judgment to the conclusion that it is not pelagic sealing mainly or principally, but that the causes have been the wasteful, improvident, uneconomic manner in which the islands have been administered. I have told you who Mr. Elliott was, and where he was employed already, and I find that he is the author of a number of works upon this subject.

He may then well be described, as he was described by Mr. Goff the Treasury Agent, and by Mr. Blaine in effect. Mr. Goff whose testimony is the more important, because he was with Mr. Elliott on the islands in 1890, and he makes no report, and makes no affidavit which is forthcoming to countervail the report of Mr. Elliott. I find on page 148 of our printed argument, and I will not trouble you to do more than take a note of it, a list of the works published on this subject by Mr. Elliott. They are nearly all, or a great many of them, published by the Washington Government.

N° 1. Report on the Pribilof group or Seal Islands of Alaska in 1873. (Washington Government Printing Office.)

N° 2. Report of the Secretary of the Treasury concerning the waste of seal oil, and the "natives" of the Pribilof Islands, and the brewing of quass. (H. R. 44th Congress, first session. Ex: Doc: n° 83 pp. 103 and 104.)

N° 3. Report upon the condition of affairs in the Territory of Alaska. (Washington Government Printing Office, 1875.)

N° 4. Ten years' acquaintance with Alaska, 1867 to 1877. (New York. Harper Brothers.)

N° 5. The Seal Islands of Alaska. (Washington Government Printing Office, 1881.)
N° 6. Report on the Seal Islands of Alaska. (Washington Government Printing Office, 1884.)
N° 7. Our Arctic Province.

This Gentleman has a right, I think, to be heard, and to be treated with respect when heard.

Now I have this volnme before me, and before I call attention in a very cursory way to it, because I endeavour to follow the lines I have laid down for myself at the beginning, namely, to treat this question in the broad outline, putting upon my learned friends the responsibility of dealing with it, as it must be dealt with in detail—before I call attention to that report there are one or two dates in connection with it which I think it is exceedingly important you should have in your minds. You will recollect that Mr. Elliott was appointed by a Statute of Congress for the purpose of making the report which is before you. He makes that report in Washington on the 17th November, 1890. It lies in the Government Office. It is not published. It is not printed. One does not need to conjecture the reason.

The reason is obvious: it did not suit the purposes of the United States in the contention in which they were engaged; but on the 4th of May 1891 there appeared an extract from this Report in the Cleveland Leader. It is so long ago since we had the discussion about the admissibility of this Report, that you, Sir, will no doubt have forgotten these facts though they were then mentioned, but the dates are very significant. On the 4th May 1891 the extract appeared in the public press. If it had not appeared in the public press, it would have lain perdue, and we would have known no more about it.

At that time a respectable gentleman, Mr. Stanley-Brown, was at Washington, and on that very 4th of May Mr. Stanley Brown goes to San Francisco and later in the month of May leaves for the Islands. In fact he leaves for the Islands on the 27th May and arrives at St. George's on the 9th June. He left on his return on the 27th September 1891 and reached San Francisco on the 2nd October 1891. I pause for a moment. We have him back safe and sound in San Francisco on the 2nd October 1891. First of all is it an unfair assumption that Mr. Stanley-Brown had Mr. Elliott's report, was told of it, if not furnished with a copy of it, was told its purport, was sent out with the view if he honestly could of counteracting its effect, and, if he honestly could, of arriving at different results from those arrived at by Mr. Elliott. He gets back on the 2nd October 1891, but from that day to this we have no report from Mr. Stanley-Brown—none whatever. We have indeed two affidavits, one dated the 28th March 1892, and the second the 16th December 1892. I will not go into those two affidavits, but I will ask you when my learned friend is dealing with the precise definite clear statement of fact advanced by Mr. Elliott to ask yourselves, if I may respectfully so suggest, as you go along whether Mr. Stanley-Brown, as he indulges in a good deal, I admit, of opinion which points in a direction different from that of Mr. Elliott,—whether he challenges any of Mr. Elliott's facts, and gives any circumstances or particulars to support him in contradiction to the views of fact advanced by Mr. Elliott.

Now bearing in mind, Sir, that though we are now told there was a marked decrease observed in 1884, some as I have said say earlier, in 1877 and 1879, yet that up till the year 1889, the reports from the islands had been of the most glowing character. I will not stop to refer to them. As late as 1889 there is a report of Mr. Tingle giving a most

glowing description of the way in which the seal race has flourished on and in the neighbourhood of the Pribilof Islands.

It is with these statements before him, and the further statement that pelagic sealing is beginning to make a formidable play or show in the neighbourhood of Behring Sea, that Mr. Elliott goes to the Islands. Now I have said I am not going to read this report, because it would take me a long time to go through it, and to go through it thoroughly, as it must be gone through thoroughly, but I will epitomize the points to which he refers. He recognizes pelagic sealing as a contributory cause of the mischief, but he does not stigmatize it as the main cause of the mischief. He attributes the depletion which he observes to the excessive killing of males, to the injurious system of driving, to the still more dangerous system of redriving again and again the same seal, and he arrives at the conclusion that the drives should be so managed that the seals actually driven are killed. He points out that whereas under the older state of things when he was visiting the islands in 1873 and 1874 it was not necessary ordinarily speaking to turn back as it was called more than 10 to 15 per cent of the entire number sought to be driven—that so reduced was the condition of things that they had to be driven and driven again and redriven and turned away from these drives as much on some occasions as 85 % of the entire number—I believe I am understating it now—it was as much as 90 per cent as my learned friend reminds me in some cases. He points out what the result of this is. He points out that the result of that driving is to cause the death—I think the expression is—"of countless thousands"—he points out the further result is, as regards those surviving, that in consequence of the cruelty to which they were subjected, so far as they were males, it was permanently to injure if not destroy the use of those males for the purpose of procreation.

Now these are the results at which he arrives, clear and distinct—not vague opinions, but perfectly justified, as I submit the Tribunal will see when they come to examine his report by facts and circumstances which he vouches.

I wish to say a little more about this. The system pursued now and which is claimed to be the only proper system is, as the Tribunal will recollect, the killing of males only. We submit that that, as it has been carried on, is not a sound principle and how my learned friends, with that marked devotion which they profess for the law of nature, could have found it in their hearts to justify it I do not understand. This is an admitted fact that nature in its arrangements produces an equal number of males and females—that is the law of nature. Is it to be said that that law exists for no purpose whatever. So is it to be said that there was not some wise purpose in dealing with animals *feræ naturæ* in these balances of the two sexes—I speak of animals *feræ naturæ* only.—If you are dealing with animals domesticated or tamed, so that you can make judicious selection of the best specimen for the purpose of reproduction in dealing with such animals we are able from long experience and observation to arrive at definite and safe conclusions as to the productive capacity of the female or as to the duration of the virile power of the male, and we may, by a system of artificial rules, improve the breed, but where you are dealing with a race admittedly *feræ naturæ* incapable of improvement in the breed by the art of man, dealing with a class where you cannot select the best specimens of males and females for the purpose of reproduction, where you are practically in ignorance, for that is one of the appalling facts in this case—the amount of ignorance, and very little is known about

seal life even to-day—entire ignorance of even the length of the life of a seal—entire ignorance, in any accurate way at least, of the length of reproductive power of the female—ignorance of how long the virile power of the male for reproductive purposes will continue, yet they have been going on disturbing that balance which nature had fixed between these sexes and defending that as the only possible way in which the seal race is to be dealt with.

Now in this connexion I wish to call attention again to those tables very briefly. It is the only reference to diagrams which I shall trouble you to make, but I must ask you to refer again to two of the diagrams which are to be found at page 352 of the United States Case, which will be found very useful, and if you will be good enough to favour me by opening, so as to have them for easy reference table A and table C, those are the tables which relate to males. I may assume that each member of the Tribunal appreciates these diagrams. I do not stop to try to explain them.—I did yesterday try to explain them. This table A is dealing with the normal conditions, apart from killing, of a herd when it has got to a point of what I suppose may be called natural equilibrium—that is to say, has got to the point which, looking to the natural causes and natural enemies to which it is exposed, and the supplies of food, and so on, is the point beyond which it would not reach and to which it would not attain unless it were by the act of man, or otherwise artificially interfered with. That is principle of the diagram. They are in the coloured part and distributed as they would be in such a herd. The green shows the yearlings to the left of the first line. The green, so far as it is to the left of the figure 2, going up the column, shows the two year olds; the pink to the left of the column at the bottom of which is the figure 3, the three-year olds; then the four-year olds, then the five-year olds; and the yellow, from 8 to 19 or 20 years of age; and each of those small squares represents 100; and the sum total of the squares so coloured is 40,025 or say 40,000 odd.

Now you observe there that in the columns from 3 to 7 which represent the class of males which is to supply the future stock of bulls for the purpose of reproduction, there is a very considerable number. What the number is I will tell you, because it has been worked out very carefully. Will you turn to diagram C? You will observe there that the yearling and two-year-old columns, the green on the extreme left, are the same as in diagram A. But in succeeding columns it shows the condition of the same herd or stock of 40,000 under conditions described as "properly regulated killing." And again, you will see the manner in which the entire number is made up and how it is reduced. The numbers are not shown on the face of that diagram, but the means of computing the numbers are shown and it is easy to determine how many seals are included under each class, or colour, of the diagram. Now these figures have been worked out and they are very remarkable. In the normal condition of natural equilibrium and apart from killing, there would be, according to the figures there shown, 3,500 young bulls at any one moment.—It is one of the assumptions in all these diagrams that the seals have obtained their natural maximum number, no increase being possible beyond this, and the same number dying each year that is born in each year.—In the normal condition, therefore, we have 3,500 young bulls from 5 to 7 years of age, the breeding bulls in the same normal condition 13,620. That is the normal condition of things. Now what is the condition of things under the system which is called normal "under properly regulated killing?" Why it is this:

Instead of there being 3,500 young bulls to supply the place of those that become incapable, there are 560 only and in the place of 13,620 breeding bulls which the normal condition shows, there are 1,980 only. There is a reduction therefore of the stock from which the future bulls will come from 3,500 to 560, and a reduction of the breeding bulls themselves from 13,620 to 1,980. These are the figures upon the face of the diagrams themselves. Can anybody doubt that that interference with the natural condition of things, that destruction of the young male stock, that interfering with the proportion of the sexes, must have, as Professor Elliott shows it must have had, a most serious and detrimental effect. The consideration of how that is made out by him, would lead me much wider and into more detail than I at all propose myself to go. That my learned friends will deal with. Suffice it to say that, whereas he insists that the proper condition is one in which the bulls, taking their place upon the rookeries and awaiting the arrival of the cows, have to fight for their harems, have to assert their rights by sheer force, and so the principle of natural selection and survival of the fittest is worked out: that in later years that state of things has entirely changed and that the harems have grown proportionately to the bulls quite in excess of what they ought to be—passage after passage and page after page of this Report is filled with records to that effect.

I have merely to contrast the state of things which he describes as existing in 1874, and which other witnesses describe as well, where the male seals were fighting and one endeavouring to assert its supremacy over the other; and he describes the condition of things as entirely and absolutely changed. This condition of things was one in which the bull formed his harem, fought for his wives, and secured as many as he could on the principle of natural selection. What is the condition of things as it is now?

I will read one passage, and one passage only because it is so expressive, from one of the affidavits of Mr. Stanley-Brown. It is the affidavit set out in the American Counter Case, at page 385. I may observe incidentally that, though Mr. Stanley-Brown does not say so, his affidavit clearly shows he was fully aware of the conclusions that Mr. Elliott had arrived at; because you will find that, though he does not put forward his opinions as distinctly traversing the opinion of Mr. Elliott, he does refer to them as statements made which he thinks are not well founded. This is an illustration, the last statement but one on page 385.

Any statement to the effect that the occasional occurrence of large harems indicates a decrease in the available number of virile males and hence deterioration of the rookeries, should be received with great caution, if not entirely ignored.

That is a statement which Professor Elliott undoubtedly put forward. This is reversing the order of nature as we generally understand it.

The bulls play only a secondary part in the formation of harems. It is the cow which takes the initiative. She is in the water beyond the reach or control of the male and can select her own point of landing. Her manner on coming ashore is readily distinguished from that of the young males which continuously play along the sea margin of the breeding grounds. She comes out of the water, carefully noses or smells the rocks here or there like a dog, and then makes her way to the bull of her own selecting.

It seems to be "Leap Year" all the year round on the Seal Islands! And in the order of nature, that law which is so much respected by my learned friends, the advances are supposed generally to come from the males; but here is the ingenuous and perfectly honest Mr. Stanley-Brown giving as a picture that which is the strongest corroboration of the utterly demoralized and unnatural condition to which, under the man-

agement of the United States lessees, because I do not suppose the Executive of the United States knew very much about it, the Islands had reached. It would be impossible, I submit, to select a stronger passage in confirmation of the general results at which Mr. Elliott has arrived than that passage which I have just read. My learned friend is good enough in this connection to refer me to the monograph of Mr. Allen, published in the Washington Government Printing Office in 1880, where he gives the picture of things as he found it in 1869 at page 385, and what is the contrast between the two statements? You have heard Mr. Stanley-Brown's ingenuous description, and this is what Mr. Allen says.

General FOSTER.—I think you will find that is quoting Mr. Bryant.

Sir CHARLES RUSSELL.—I am obliged; I see it is in inverted commas.

General FOSTER.—Mr. Allen was never there.

Sir CHARLES RUSSELL.—No doubt, it was Mr. Bryant who was on the Islands, I forget for how long.

General FOSTER.—For a good many years.

Sir CHARLES RUSSELL.—Yes; and perhaps that makes it more valuable than the opinion of Mr. Allen, if Mr. Allen was not, as my friend says, on the Island.

I begin at the bottom of page 382.

The male fur-seal attains its full growth and strength at the age of six or seven years, when it weighs, at the time of landing, from three hundred and fifty pounds to four hundred; in exceptional cases a weight of four hundred and fifty pounds is attained. The males acquire the power of procreation in the fourth year, and at five years share largely in the duty of reproduction. The females bring forth young in their fourth year.

That differs from the opinion of others, who say that it is in the third year. Then he goes on to describe the arrival on page 384 at the bottom of the page.

By the middle of June,

And this date is not unimportant with reference to another matter which I shall have to describe, he says:

all the males, except the great body of the yearlings have arrived.

I think I ought to read a little higher up, to explain how the bulls proceed. At the top of page 384 he says this, which perhaps I ought to read.

On their arrival at the island the full grown seals separate from the younger, the former hauling up on the shore singly or in groups of two or three, separated by quite wide intervals.

Then a little lower down he says:

It is only the "beachmasters", or breeding bulls, on the rookery that remain continuously in their places, for if they were to leave them they would be immediately occupied by some other beachmaster, and they could regain possession only by a victory over the trespasser. The struggle among the old bulls goes on until the breeding grounds are fully occupied, averaging one old male to each square rod of space, while the younger, meantime, find their way to the upland. During the latter portion of the landing time there is a large excess of old males that cannot find room on the breeding places; these pass up with the younger seals and congregate along the upper edge of the rookery, and watch for a chance to charge down and fill any vacancies that may occur. These, to distinguish them from the beachmasters, are called the "reserves", while those younger than five years are denominated by the natives "holluschucke", a term denoting bachelors or unmarried seals. It is from these latter that the seals are selected to kill for their skins.

By the middle of June all the males, except the great body of the yearlings, have arrived; the rookery is filled with the beachmasters; the reserves all occupy the most advantageous position for seizing, upon any vacancies, and the bachelors spread over the adjoining uplands. At this time the first females make their appearance.

They are not observed in the water in any numbers until they appear on the shore. Immediately on landing they are taken possession of by the nearest males who compel them to lie down in the spaces they have reserved for their families. For a few days the females arrive slowly, but by the 25th of the month thousands land daily. As soon as the males in the line nearest to the shore get each seven or eight females in their possession, those higher up watch their opportunity and steal them from them. This they accomplish by seizing the females by the neck as a cat takes her kitten. Those still higher up pursue the same method until the entire breeding space is filled.

And then he goes on to describe the fighting among them for the possession. Will you contrast those two pictures?

Again, in 1874, Mr. Elliott, in his book which I have already referred to on the seal Islands—the book published in 1881 at the Government Press Printing Office says on page 35:

Between the 12th and 14th of June, the first of the cow-seals, as a rule, come up from the sea; then the long agony of the waiting bulls is over, and they signalize it by a period of universal, spasmodic, desperate fighting among themselves. Though they have quarreled all the time from the moment they first landed, and continue to do so until the end of the season, in August, yet that fighting which takes place at this date is the bloodiest and most vindictive known to the seal. I presume that the heaviest percentage of mutilation and death among the old males from these brawls, occur in this week of the earliest appearance of the females.

Then he, like Mr. Bryant, describes the organization of the seraglios, at page 36. He says:

They are noticed and received——

that is the females are—

by the males on the waterline stations with attention; they are alternately coaxed and urged up on the rocks, as far as these beach-masters can do so, by chuckling, whistling, and roaring, and then they are immediately under the most jealous supervision; but, owing to the covetous and ambitious nature of the bulls which occupy these stations to the rear of the waterline and way back, the little cows have a rough-and-tumble time of it when they begin to arrive in small numbers at first; for no sooner is the pretty animal fairly established on the station of male number one, who has welcomed her there, than he, perhaps, sees another one of her style in the water from whence she has come, and, in obedience to his polygamous feeling, devotes himself anew to coaxing the later arrival, by that same winning manner so successful in the first case; then when bull number two, just back, observes bull number one off guard, he reaches out with his long strong neck and picks up the unhappy but passive cow by the scruff of her's, just as a cat does a kitten, and deposits her upon his seraglio ground; then bulls number three and four, and so on, in the vicinity, seeing this high-handed operation, all assail one another, especially number two, and for a moment have a tremendous fight—

and so forth.

If I were to enlarge upon this I should be led away from the line which I have endeavoured so far to follow. One other cause, and not an unimportant cause, Mr. Elliott mentions. But just see what is the obvious result of this state of things which he describes—that unnatural reduction of the young bull stock to one-seventh of its number in a normal condition—that unnatural reduction of the breeding bulls to something like the same—between one-sixth and one-seventh of its normal number in its natural condition. One expects to find the results which are pointed out and which will be pointed out in detail, of the evidence of useless bulls—bulls not having lost their sexual instinct, but, having by driving and re-driving lost their power of reproduction, have become *incapaces res;* and the increase which the evidence points to of the enormous number of barren females, and so the birth-rate of the whole race of seals is seriously injured.

The other cause to which I was about to refer is raiding, but upon that I only wish to say a word or two. With all their anxiety and their care to cherish the seals, certainly if I am to rely upon the statement

of their own representatives and agents, the United States Government has not afforded efficient protection against raiding.

I will not stop to read these authorities, but I would ask the Tribunal to take note of them. They are at pages 290 and 291 of the British Counter Case. Mr. Taylor in 1881; Mr. Kimmel in 1882—both agents on the islands. Mr. Glidden from 1882 to 1885; Mr. Wardman in 1883; Mr. Ryan from 1885 to 1887, and so forth. A note of their evidence is to be found on the pages I have already given. Then, Mr. President, I submit I am now justified in saying that I have, so far, established two things: That although I do not deny at all (and we never have denied) that pelagic sealing has some operation—is a factor in the question of reduction of seal life—that it is not the case with which we are dealing. The main factor—the principal cause—is the mode in which the management has been carried on upon the islands, and the fact that regardless of warning the United States lessees have, over a series of years gone on further and still further and yet further depleting the herd. It is I think an expressive thing—a very significant thing—to look at the figures of the killing upon the Pribilof Islands as they were pursued under the Russian *régime*, with the system as pursued under the United States *régime*. Those figures are to be found in a convenient tabular form, at page 132 of the Report of the British Commissioners; and whereas during the Russian period beginning from 1817 down to 1867 the year of the cession—I have not got the numbers averaged—anyhow the average is considerably less than 40,000. Considerably less than 40,000 were killed when the Russian Government possessed these Pribilof Islands. The highest year but one is the earliest year of which we have actual record. In that year, 1817, it was 60,000 odd. In 1867 it was 75,000, but in the intervening years the number was 40,000; 150,000; 16,000; 6,000; 8,000; 10,000; 11,000; 26,000; 21,000; 34,000; 40,000; and so forth—an average far less than during the American period.

Now let me pause here for one instant. It being clear that man can do nothing to increase the breeding of the seals—nothing I mean in a positive way. He can by leaving them undisturbed; he can by abstaining from killing them—but I mean except by negations he can positively do nothing to advance them. We admit therefore that when the Russians had this management (and they had considerable experience in it), that they were taking as much on an average as they thought right; but what is more noticeable in these figures is this—that they have observed the necessity for varying the number taken, not treating it on a uniform system as if you were calculating upon a crop of hay which you mowed every year, and from which you expect to get the same result per acre—they regarded it as a period during which it required absolute rest; so that you will find in the years 1835, 1836, 1837, 1838, 1839, 1840, and 1841, the lowest number taken was 6,000; the highest 8,000. Again, in 1850, 1851, 1852, the highest number is between 6,000 and 7,000; in 1855, 8,000, and so forth through the whole period of their management. Then we come down to 1867, and in the years succeeding the cession, we have that admitted serious attack upon this race amounting to 242,000 in 1868.

In 1869 the killing amounted to 87,000; in 1870 to 23,000; in 1871 to 97,000; in 1872 to 101,000; in 1873 to 101,000; in 1874 to 107,000; in 1875 to 101,000; in 1876 to 89,000; in 1877 to 77,000; and so on, right down to 1889, with the single exception of 1883, when 77,000 odd were killed an excess over 100,000 per year. And let me observe this: that whereas the Russian figures include the number of pups killed for the

purposes of the islanders during the years from 1817 to 1837, that the United States figures exclude the number of pups killed upon the island for the purposes of native food; and the average annual killing of pups upon the island—I wish the Tribunal to realize this fact—amounts to, as there stated, 4,600 pups annually. It does seem to me a curiously uneconomic condition of things if the seals were worth preserving that the lessees were not made, as part of the conditions of their bargain, to supply adequate food which would dispense with this sacrifice of seal life which they profess to be so valuable.

Lord HANNEN.—Does it appear what proportion of the 4,600 pups are male, and what proportion are female, or is it indiscriminate?

Sir CHARLES RUSSELL.—They are indiscriminate so far as we know I think.

Sir RICHARD WEBSTER.—They are male.

General FOSTER.—They are males of course—they are all young males.

Sir CHARLES RUSSELL.—That may be taken to be so.

General FOSTER.—I think Sir Charles is not aware of the fact that we dispute this table of figures on this question.

Sir CHARLES RUSSELL.—I think, General Foster, I may, quite respectfully and courteously, say that I assume that everything that tells against your argument, and your position, you do dispute; I am not at all relying upon your assent to these figures.

Lord HANNEN.—It is an addition, then, to the number of male pups.

Sir CHARLES RUSSELL.—It is an addition to the number of male pups killed. I thought they did not discriminate the pups. I take the fact to be that the instructions and injunctions are that they shall kill only male pups; but whether those are accurately carried out, is another matter, because we cannot lose sight of the fact that the evidence of the fur dealers which has not been questioned as has been apparent, shews, although it is against the policy and orders of the United States officials, that a considerable percentage of female seals are killed on the Pribylof Islands.

General FOSTER.—The pup-skins never go to market.

Sir CHARLES RUSSELL.—I am not, in this connection, talking of pups at all—I am going to shew that even if the directions are given, it does not follow that the directions are carried out, because as I said from the Furriers evidence, which I read I am sorry to say a great many days ago, it is shewn that of late years there was an appreciable percentage—stated in the evidence of some of them I think to be from 10 to 15 per cent—I think one of them says 25 per cent—but up to 15 per cent at all events, of female skins in the Pribyloff consignments.

Now, Mr. President, as my friend Mr. Foster has thought right to interpose to say that they dispute these figures, I must call attention to the fact that from the year 1871 down to the year 1889, the figures are taken from the document which I am now about to describe. On page 134 the British Commissioners say this:

> The figures for these years—that is 1871 to 1889—were taken from Correspondence relating to Behring Sea, Seal Fisheries, Parliamentary Paper [C. 6368], pp. 44–47, and include all seals, other than pups, killed for any purpose. From 1870 to 1889 (both inclusive), 92,864 pups were killed for food, an average annual killing of 4,643.

There is the authority for it which Mr. Foster can examine for himself.

That, Sir, is at page 134 of the British Commissioners Report, so that the authority for the statement is vouched. And if it be the fact that the instructions have been literally carried out which enjoin the killing of males, and the killing of males only, then this is an addition to the annual depletion of the male life of the seals.

I was proceeding, Mr. President to say that I have now got to a point at which I am entitled to ask the Tribunal to say that pelagic sealing is not—is shewn not to have been—the main cause of the injury which the Commissioners both of the United States and Great Britain agree has taken place in relation to seal life. The main causes are to be found in the facts stated to which I have already briefly adverted, in that Report of Mr. Elliott; and now I think that these circumstances ought to have, as I am sure they will have, a very important influence on the mind of the Tribunal in considering the Regulations which have, in justice, in fairness, and in equity, to be applied in the circumstances which I have mentioned. I took the opportunity earlier, of saying that the Treaty does not contemplate Regulations for the aggrandisement either of the United States or of the lessees of the United States—that is not the object of the Treaty. The object of the Treaty is declared to be the preservation of the fur seal species. That is the object to which the Regulations are to be addressed. To be preserved for whom? Here, Mr. President, I cannot but feel that the view which we urged on this Tribunal at a very early part of this inquiry was one which, if the Tribunal had seen its way to act upon it, would at all events have simplified the discussion upon which we are now engaged. We thought, and think, that the question of Regulations was not to be broached or considered until the questions of right had been determined, and is there anyone who has heard the course of this case and who having heard this case—heard the proposition which my friend Mr. Foster, as Agent of the United States, put forward on the subject of regulations, who believes that if this question of right had been determined, as we submit it must be determined—could any such suggestion as is to be found in the precious paper read yesterday for one moment have been put forward? We submit that there is not a shred of a case left to the United States on the questions of right at all. I am arguing, Sir, as you know, upon the principle—upon the basis—that we have negatived, and that your determination will negative the existence of any legal right in the United States except the legal rights which they possess, *ratione soli*—as owners of the islands, and owners of the islands alone.

Now I wish to say a word or two (before I come a little more closely to the question of Regulations) about the British Commissioners Report. I adverted to this subject before. I do not intend to make any lengthened reference to it now, but I will say this: that when my friend Mr. Carter thought it right to make an attack upon these Commissioners and to make an attack even, in one or two passages, upon their good faith, I think he had not read the mandate under which they were acting, and I even doubt whether he had had leisure thoroughly to master their Report itself. If he had read their mandate he would have seen that they were called upon by that mandate to inquire into any fact or circumstance touching seal life: that by their instruction of June 1891 they were directed to ascertain:

1. The actual facts as regards the alleged serious diminution of seal life on the Pribilof Islands, the date at which such diminution began, the rate of its progress, and any previous instance of a similar occurrence.
2. The causes of such diminution; whether, and to what extent, it is attributable.
(*a.*) To a migration of the seals to other rookeries.
(*b.*) To the method of killing pursued on the islands themselves.
(*c.*) To the increase of sealing upon the high seas, and the manner in which it is pursued.

And, finally, in January of 1892 they are enjoined to consider in their Report what Regulations may seem advisable, whether *within* the jurisdictional limits of the United States and Canada, or *outside* those limits.

I content myself with saying therefore, that as regards the area covered by their Report they would have failed in their duty if they had not dealt with all the subjects that are dealt with in their Report, and when an attack is made upon them because forsooth they do not "run-a-muck", if I may use that vulgarism, against pelagic sealing—abused because they suggest that a combined system of zone and close time and licence will answer all reasonable purposes of protection of the seal species—my friend forgets that Mr. Blaine thought that a 60 mile zone round the islands without any close time would have been an adequate protection of the interests that were at stake; and that my friend Mr. Phelps, whether intentionally or accidentally, I do not know, in his printed argument states that the claim which the United States is advancing is this. Having argued the question of protection, interest, and property, at page 139 my friend says:

> The inevitable conclusion from these facts is, that there is an absolute necessity for the repression of killing seals in the water in the seas near the Pribilof Islands, if the herd is to be preserved from extinction. No middle course is practicable consistently with its preservation.

Therefore if no middle course is possible, the extreme course that my learned friend suggests is that there is an absolute necessity to prevent the killing of seals in the waters near the Pribilof Islands if the herd is to be preserved from extinction. I therefore think that the attack upon the learned commissioners is not merited, not justified; and I can say in relation to Mr. Elliott's report, that it is not possible to read that report, as I have read it, and as I have read Mr. Elliott's—every line of them—without seeing that there is a painfully conscientious effort upon the part of Sir George Baden-Powell, and Dr. Dawson to put the *pros* and *cons*, the considerations in favor of, and considerations against particular views impartially and fully before the Tribunal by whom it is to be used.

Now, I may have to come back to that again for one moment, but I proceed to the consideration of the general conditions which I submit ought to be observed in relation to regulations. Mr. President, I begin by admitting that according to the terms of the treaty there is no authority in this Tribunal to enjoin rules to be observed upon the islands; that is to say, this Tribunal has no legislative authority, if I may use that word, to legislate directly for the islands; because I must admit that the Article VII which deals with regulations, limits the question of regulations for your arbitrament to regulations outside the territorial limits of the respective governments. But while I admit that, I am as far as possible from admitting that it thereby follows that you cannot make regulations which shall be conditional upon the observance of certain rules upon the islands, which is a very different thing; and I hope to make it apparent that not only can you do so, but that you would be failing in giving effect to the prime object of the treaty itself if you did not do so.

Let me illustrate it at once. Mr. Elliott says in his report that a period of absolute rest is necessary—not of pelagic sealing merely, but a period of absolute rest on the islands. He says that without that rest the seal race may not be saved from extermination. Your rules are to be aimed at that preservation; and let me ask you—because it is an absolute test of the soundness of the proposition I am advancing; I do not say whether Prof. Elliott is right or wrong in that—but assuming you should be of opinion that he is right, and that absolute cessation of killing on the islands is a condition of the preservation of the fur-seal species, am I to be told that you could make no condition in your regu-

lations as to pelagic sealing? You are to make rules that are necessary. A rule is not necessary if it is utterly ineffective and utterly useless and utterly insufficient; and therefore if the state of the case be—I know not what your opinion about it is—but if the state of the case in fact be that if you prohibited pelagic sealing tomorrow, but killing was to go on on the islands, your pelagic sealing rules would not be worth the paper they were written upon for the preservation of the seal species, am I to be told that you have only the right to prohibit pelagic sealing? But we believe it is a necessary condition also for the preservation of the seal life that there shall be a cessation for a definite period of killing upon the islands too.

It seems to me it would put this Tribunal into a most ludicrous and false position to suggest that that argument is not perfectly and absolutely sound.

If, then, I have illustrated—and I do not know any answer to it—a case in which it would be idle for you to make regulations which would be ineffective and useless for the object in view without annexing conditions, then I say it follows that you have the authority to annex those conditions, and that if you believe, honestly and impartially and decide as every one of you will, I doubt not, fairly between the conflicting interests which are concerned, arrive at the conclusion that as a condition of any restriction upon the rights of the nationals of any country upon the high seas, there ought to be an accompanying restriction with a view to the preservation of seal life by definite regulations upon the islands, that you have a perfect right to say, "our regulations are conditional upon the observance of such regulations upon the islands".

There is a further question which I think ought to be considered, namely, as to whether or not it is in your power, and if in your power whether in the exercises of your discretion you ought, to make your rules permanent or temporary. I do not dispute that you have the power to lay down rules, inflexible as the laws of the Medes and Persians. I do not dispute that you have the power to do so.

Senator MORGAN.—Still, Sir Charles, you would say, I suppose, after this award had been made that the two Governments could dispense with them if they chose to do so by agreement. We are not establishing a principle of international law, as I understand it.

Sir CHARLES RUSSELL.—No, Sir; I quite agree with you.

Senator MORGAN.—It is bound to be temporary in the sense that the two Governments, by agreement hereafter, could dispense entirely with them.

Sir CHARLES RUSSELL.—I have no doubt they could, Sir, but one can conceive a case in which the United States might take one view and in which Great Britain might take a different view. I quite admit, Sir, what you say, that of course the parties to an agreement, can, by mutual consent, put an end to the agreement.

Senator MORGAN.—But still these two governments could not abolish any principle of international law by themselves.

Sir CHARLES RUSSELL.—No; Except as between themselves certainly not. We are not now upon principles of international law. Of course you understand we are now upon the question of expediency.

Senator MORGAN.—I spoke of that as an illustration, that is all.

Sir CHARLES RUSSELL.—Oh yes; I know. I think this point is not unimportant, Sir. I think it is very important, from whatever point of view it is looked at. I do not think this question of whether the regulations ought to be temporary or permanent is a question which can be said to be in the interest of the United States more than in the interest

of Great Britain, or *vice versa*. It is a serious thing to interfere with the unrestricted freedom of the nationals of any power upon the high sea. The tribunal will therefore be very slow, unless they are clearly convinced of the necessity of doing it, of putting such restrictions and if they think such restrictions should be put, they will naturally be anxious to make these restrictions as light and as little harassing to the nationals of other powers and to the commerce, I may say, of the world, as they possibly can. And therefore, either way, it is not a matter which can be said to be exclusively in the interest of Great Britain or exclusively in the interest of the United States. The rules may be found to be too stringent, and therefore require relaxation. They may be found to be too lax, and therefore require further stringency. But the point I was first upon is whether it is open to you to make temporary rules. If the Tribunal was clear about it, of course I should not proceed to argue it; but I do not know what views my learned friends take upon the point; and therefore I must submit very briefly the views which we entertain. You are to make regulations for the proper protection and preservation of the fur seal in or habitually resorting to the Behring Sea and you are to say over what waters such regulations shall extend; and finally, the only other part of the treaty which bears upon the matter is the provision which is to be found in Article XIV, that

The High Contracting parties engage to consider the result of the proceedings of the Tribunal of Arbitration as a full, perfect and final settlement of all the questions referred to the Arbitrators.

Lord HANNEN.—Will you allow me to ask you a question? You have said that there is general ignorance at the present time on this subject. How could we fix upon any number of years which would be sufficient? It is not for the preservation of the seals for say ten years but generally for that preservation. Would it not be better that we should make regulations under which information would be collected, and which might form the basis of negotiations hereafter between the two countries for the modification of any rules we may lay down?

Sir CHARLES RUSSELL.—I have a note of, and intend to make, Lord Hannen, that suggestion in connection with the question of regulations. I have a note to that purpose. I quite agree that that would be a most important thing; but I was for the moment, if you will allow me, dwelling upon the question whether there was power to make temporary regulations. I will say a word about the expediency of making them in a moment. I was meeting the argument which might be based upon Article XIV, although I do not know that my learned friends would feel themselves interested one way or the other upon this question. I would only say—it is a short and a small point—that although article XIV contemplates that the result of the arbitration is to be a full and final settlement of the questions, it does not at all follow that temporary regulations would not completely answer that purpose. Regulations even to five, ten, or what ever period of years should be adjudged to be proper, would not be the less a final ending of the present dispute, because that final ending is arrived at by the adoption of a set of rules temporary in their organization, and not permanent in their character.

That is really all I have to say about it. As regards the explanation of it I quite agree with what Lord Hannen says; but it occurs to me, with great deference, to submit to the gentlemen of this Tribunal that that very ignorance that prevails, upon which I propose to say only a word or two, points in the direction which can hardly be doubted, of

extreme caution in the imposition of rules, in view of the lack of definite information, the result of which it is impossible to predict, with anything approaching certainty by any person applying himself to the consideration of this question. What do we find here? A number of questions in debate of the most elementary kind about these fur-seals. One is struck by the reading of this voluminous literature with the fact that although fur-sealing pelagically and on land, has been carried on—pelagically certainly probably from the earliest time—on land also for more than a hundred years—that absolutely until the year 1891-92 no one appears to have had any knowledge whatever as to what was the migratory route of the seals. It appears to have been the result of the discovery of the Commissioners from both countries sent out for that purpose, who have traced in a rough way, but not marked out with that precision and that accuracy, which if it were possible at all, could only be arrived at by prolonged, anxious and repeated observations, extending over a great number of years.

Take another question. We have a general idea of the period of gestation of the female—that it is between 11 and 12 months. Where are the figures; where are the instances? Still less have we any accurate account of the breeding life of the female.

Again as to the bull—either as to the duration of his life or as to the duration of his powers. None.

Again we have the fact which in another connection I must refer to, of the extraordinary abstention from food for long periods of time. It is admitted that that does take place—admitted by my learned friends and by us; it is common ground between us. It is admitted that the bulls do not feed from the moment of their arriving upon the breeding grounds in May or June, until their breeding functions on the rookeries are at an end, when in July or August they leave the islands—an amazing fact, a fact which also occurs in the case of other wild animals, the walrus, the sea otter and I think some other species of the seal. But how about the females in nourishing their young? Upon this point, which is in connection with a zone as to regulations, a very important one, there the most flat contradiction between the views taken by those arguing for the United States or supporting their contention and the views taken by those who are representing the views or supporting the views of the Government of Great Britain. When does the female seal first take food, if it takes it at all; at what period in the life of the pup? When is the pup self-sustaining? All these are questions as to which absolutely the Tribunal is in a state of comparative ignorance.

Mr. GRAM.—Will you allow me. Is there anything which shows that the number of male seals born each year is the same as the number of female seals?

Sir CHARLES RUSSELL.—Yes, Sir. I will refer you to that. The evidence is that they are born in equal numbers, male and female—taking an average, of course, of years.

The PRESIDENT.—That is not contradicted on either side?

Sir CHARLES RUSSELL.—No Sir. It is common ground between us.

Mr. CARTER.—It is assumed rather than proved.

Mr. PHELPS.—We suppose it to be true.

Sir CHARLES RUSSELL.—My friend Mr. Carter argued the case on that basis and assumed it; and we have both assumed it, and there is no evidence to the contrary.

Sir RICHARD WEBSTER.—The United States counsel take that view.

The PRESIDENT.—Perhaps counsel on both sides will explain for us a point in natural history, whether notoriously polygamous animals are also born in equal proportions, male and female?

Sir CHARLES RUSSELL.—Deer for instance.

The PRESIDENT.—And yet we know they are polygamous.

Sir CHARLES RUSSELL.—In every instance, so far as we know. In answer to Mr. Gram I refer to page 451 Case of the United States, in which the report of their Commissioners is set out. On that page they say:

> If a herd of seals be taken in its natural condition, that is as not interfered with by man, males and females will be found practically equal in number, as the number of births in a year of both sexes is the same, and we have no reason to believe there is any great difference in the natural mortality of the sexes.

Mr. FOSTER.—That is a hypothetical case, in which you state the fact.

Sir CHARLES RUSSELL.—It stands thus: that so far as I know—I do not of course speak myself as an authority at all—but so far as we know of the case of animals which may be said in any degree to be analogous, or indeed in any class of wild animals, the proportions of males and females are equal.

The PRESIDENT.—And yet there are a certain number of animals which are notoriously polygamous and consequently each male supports or defends a certain number of females collected around him.

Sir CHARLES RUSSELL.—As for instance deer.

The PRESIDENT.—What becomes of the superfluous male?

Sir CHARLES RUSSELL.—He is killed off, I suppose, just as the superfluous female is killed off. A certain proportion is observed. It is the principle of natural selection, the principle of the survival of the fittest.

The PRESIDENT.—That may be by natural means, or artificially. I merely point out that question as one that may be of interest.

Sir CHARLES RUSSELL.—I am afraid that I perhaps did not convey my views clearly in relation to that.

I admitted that if you have got a race of animals naturally wild and can tame them, so that you can substitute for the rude rules, if you please, of nature, a principle of artificial selection of the best looking females and the best looking males, and so improve the breed, and by observation, artificially conducted, ascertain what the relative breeding capacities of male and female are, then you may in the case those animals improve the breed then alter the relation of numbers; but in state of nature you cannot interfere with those rules of nature unless you are prepared to introduce an artificial system by which you can work out the results on a certain basis.

But apart from the question of improving the species, which is another question from that of preserving it, the question is whether in the case of polygamous animals man disturbs the order of nature when he brings about the destruction of superfluous males by his own means instead of leaving it to the animals to fight it out.

Lord HANNEN.—But then he adds his destruction to that of nature.

Sir CHARLES RUSSELL.—I am afraid, Lord Hannen, that I interrupted you.

Lord HANNEN.—It is past now. I was only going to express the same idea which you expressed.

(The Tribunal here adjourned for a short time.)

Sir CHARLES RUSSELL.—I have still a few words to say, Sir, upon the question of the general application of the character of the Regulations before I come to any definite suggestion. And I was upon the question whether there was authority in the Tribunal to make temporary Regulations as to which I submitted there was, and I was then considering the question of the expediency of exercising the authority

so to make them. I have not the book here, but I have sent for it, and if it is not, as it probably is, in the library of the learned President, I would ask him to peruse upon the subject of natural selection and on the doctrine of the survival of the fittest, a book with which I have no doubt he is generally familiar—I mean Darwin, and he supplies from actual observation as well as from argument an admirable answer, if I may respectfully say so, to the doubts which the learned President was suggesting. I am told that the book has arrived, but I have not had the opportunity of refreshing my recollection with reference to the passages by to it, so I will not stop, but will leave it to my learned friend if he should think fit to refer to it.

Then there are other matters also to be taken into consideration, besides the absence of anything like accurate information upon some of the important conditions of seal life, pointing, as I submit, in the direction of temporary rather than permanent Regulations, and, fairly considered, this is not an argument that would not be equally to the interests of the United States for the reason I have already mentioned. Further consideration in a possible change of circumstances which is not at all an unlikely thing to happen may become necessary. Fashions may change. In the case there are mentioned the elaborate efforts which are ingenious and cost money, which the representatives of the lessees made in order to create a fashion in seal skins, and I do not know whether I have mentioned it before, but it is a fact stated to be historically true, that when the Hudson's Bay Company were anxious to get their furs into popularity in London—I am not sure that I have not mentioned this before—they invited the co-operation of a celebrated dandy of that day—no less a person than Beau Brummell, and Beau Brummell was induced to accept the gift of a coat made of the skins of martens, and he was able to induce his friend, the Prince Regent to do the same thing, with the result that the particular skins in question became very popular. We know the shifting of these fashions. Take the case again of the beaver hat. It was once supposed to be a necessity of civilization, but who wears a beaver hat now? Why do not they wear them? Because they have an artificial substitute, so that one cannot predicate with any kind of certainty what the circumstances may be at any future time. Or again, the fact that the seal may leave the place, because of some change of food supply in the broader ocean—which may drive them closer to land and might interfere with some of the great industries carried on in the United States as well as British Columbia.

My learned friend, Mr. Robinson, was perfectly right, that if there were ten thousand Regulations forbidding the destruction of the fur-seals, if they were found to conflict with any of those industries, the fur-seal is inevitably doomed to go. All these considerations, as it seems to me, point to the expediency of making not permanent hard and fast rules which purport to operate forever but to the making of regulations which would exist for a time sufficiently long to allow experience to be matured, so that the future consideration of the problem, if it still exists to be considered, should be approached in the light of fuller and ampler and more detailed information than can now be presented to this Tribunal. It might possibly be suggested as an alternative that while you make your Regulations apparently perpetual in their character, there might be reserved to either of the Powers to denounce the Regulations after the expiry of a definite number of years, the effect of which would be to remit the parties respectively to their original position and therefore their original rights, whatever those rights were,

with the certainty that they would approach the consideration of the position in which they then stood in the light of fuller and more accurate and a juster appreciation of what the relevant facts are. I pass from that general consideration. The Tribunal will recollect that in the correspondence previous to the Treaty and after indeed it had been to a large extent reduced to the form which it ultimately took, that Lord Salisbury desired to introduce a stipulation that the rules of the Tribunal should be conditional upon the concurrence of other Powers, and you will recollect also that the United States objected to that suggestion and would not concede it, that Lord Salisbury did not insist upon it as a condition of the Treaty, but reserved to himself the right to represent the matter to the Tribunal. Now I wish to be distinct in reference to that matter. I am not here at all asserting that the concurrence of other Powers ought to be a condition of the application of your Regulations. I have only to say in that connexion, however, this, which I hope will be considered a just and prudent observation, namely, that the Regulations ought to be of a character which will not repel, but which will rather invite the assent and cooperation of other Powers.

Let me remind you, Mr. President, that the Treaty has an express stipulation upon this point. It is the concluding sentence of Article VII.

> The High Contracting Parties furthermore agree to co-operate in securing the adhesion of other Powers to such Regulations.

I think you have followed the position I take. I do not suggest that the concurrence ought to be a condition precedent to your Regulations or to the enforcement of your Regulations, but I do suggest the regulations themselves ought to be such as will probably, from their reasonableness, secure the assent and co-operation of other powers.

I will not dwell upon the point further beyond saying that, of course, it is obvious that if you make a set of Regulations of a character which would give a monopoly to the United States and exclude the nationals of Great Britain from any share in the pursuit of the fur-seal that you would be doing the very thing which not only would not invite the cooperation of other Powers, but which would suggest to the nationals of other Powers whether, this being a fair field for adventure and enterprise, they may not embark in it, and so the Executive Authority of those particular nationals would have an interest not to co-operate, but an interest to dissent from the observance of these rules.

I do not need again, of course, to point out that the rules which are made within the limits of their authority by this Tribunal are rules to which the Government of the United States and Great Britain must pay honest, *bona fide* deference and respect, and must seek to have effect given to them by legislation, which is a necessary means of giving effect to them; but and when all that is done, when your Regulations are framed, and when legislation in the respective countries has been accomplished for the purpose of giving effect to them, neither your rules nor the legislation of the United States or of Great Britain affects any other Power in the world, or the nationals of any other Power in the world. If they are reasonable Regulations, if they are Regulations which, in the circumstances of the case, commend themselves to the good sense and spirit of equity of other Powers, they will concur in them, and will co-operate in giving effect to them; otherwise not.

Of course, the great argument of force might be replied to me in this connection. It might be said, and with a great show of reason, that, if Great Britain and the United States were standing side by side in a dispute of this kind, it would be very difficult for any other Power to resist or gainsay their will in this particular matter. Quite true; so it would, as a matter of force, but as a matter of reason (which is the domain to which I am now addressing myself), it is obviously a part, if I may respectfully so put it, of the duty of the Tribunal to frame Regulations which shall be reasonable in themselves and which shall recommend themselves for acceptance by other Powers.

I need not say that it is the *alpha* and *omega* of my argument that there is no right to exclude the nationals of other Powers from pelagic sealing; that it is the right which I have been claiming not for Great Britain or the nationals of Great Britain, or the nationals of the United States, but for mankind, without any exception, of any Power, great or small.

Lastly, and this is a very general observation, a general condition touched upon early in my observations, that the Regulations must be marked, putting it respectfully, with a spirit of fair adjustment of rights which expediency suggests in the circumstances of the case; and, for the preservation of the fur-seal species, should be subject to certain limitations and restrictions.

Now, Sir, I have said all that I desire to say on the subject of general considerations, in the light of which the question of Regulations is to be approached.

Now for a few moments I will ask the Tribunal to turn to the British Commissioners' report. I am not going to dwell at any very great length upon this report, but I think so far as I shall have of course to criticise the suggestion of the American Commissioners, and particularly the suggested scheme if scheme it can be called, put forward yesterday evening. I wish first of all to see how the matter has been dealt with and approached by the British Commissioners. First let me make this clear, that these Commissioners, in the suggestion that they are making are dealing with a scheme which shall be general in its application. They are not dealing with a scheme under the treaty or with reference to the treaty. They are asked to report upon the condition of seal life in and in connection with the Pribilof Islands. They are asked to report upon the cause of the injury which that seal life is said to be suffering from, and they are asked to suggest what are the steps which in their judgment ought to be taken to remedy the state of things supposed to exist.

Senator MORGAN.—All that was done, Sir Charles, if I remember rightly before the treaty really was signed.

Sir CHARLES RUSSELL.—Quite true, Sir, but no doubt in view of it.

Senator MORGAN.—Of course.

Sir CHARLES RUSSELL.—Quite so and what I want to guard against is this, that you find they make suggestions which would have no application outside Behring Sea, for instance they will be found to have made suggestions, and important suggestions, with regard to the Pribilof Islands. I mention those subjects to show they had not the treaty before them upon which they were placing any particular construction and dealing with regulations pointed distinctly to the provisions of that treay, but they are dealing with the matter upon the supposition—and not an unnatural one as I conceive—that the United States would have been willing to concur with Great Britain in submitting the whole area on and off the Islands to Rules or at least the consideration of Rules

which should be, as far as was necessary, applicable both to the Islands and the sea.

Now their report begins substantially at page 6 where they deal with the general conditions of seal life and on page 7 under the head *b.* killing on the breeding Islands; they deal with the state of things which they have found and they enter into a historical review, at the bottom of page 7 and on page 8, as to the measure of slaughter during the Russian, and during the period of the United States, control. I have already given the figures and I do not stop to refer to them, but I may observe in passing as regards killing upon the Islands which is claimed as being discriminating, there is this to be said about it, it cannot escape from this charge—I am not now going back upon the consideration of whether it can be truly called discriminating—that I have already dealt with as far as I propose to deal with it—but there is this charge to be made against it and from which it cannot escape, namely, that it is a killing carried on at the time at which in the case of rules for the preservation of other wild animals those rules exempt those wild animals from all interference, namely, during the breeding season.

That is the peculiarity of this beautiful system pursued upon the Islands, namely, that at the very period when the race is engaged in the work of reproduction, that is the very time at which the scientific killing, which is open to no objection whatever, takes place upon the islands, a system which in those conditions the British Commissioners, I suppose in order to show how partizan and unfair they were, describe as a system "transcendentally perfect", whatever that means. But there it is. The killing is carried on at the very period when the system of law in all countries in the world,—municipal law I am talking of—leaves the principal race or races of wild animals or birds wholly unmolested, namely the breeding season. That entails the consequences to which Professor Elliott in part refers to, of which we have abundant evidence scattered throughout the whole of the case, of the disturbance of the harems, of the mixing up of the young and the old, the stampedes of the old involving the death of the young, the driving and re-driving from their getting mixed up in the way described. But so it is.

The PRESIDENT.—Is it shown that the fur is of lesser quality during the breeding period—that the hair falls off, for instance?

Sir CHARLES RUSSELL.—That is the "stagey" time, undoubtedly. What I call the breeding time is later. The evidence appears to stand in this way. The females have practically all arrived by about the middle of June,—between the middle and the end of June; the great bulk of them, I think it may be said, by the middle of June.

They very early after their arrival produce their young. I think the evidence points to the conclusion, in point of fact, they do not seek voluntarily the land until the suggestion of nature comes to them; and they are, very speedily after their arrival, delivered of their young and then, after a comparatively short time, impregnation is supposed to follow—within a very short time after the delivery of the young. The stagey condition is at a later period, July and August, but what I called the breeding-time, and it was in that sense I was using it, was this—I was referring to the whole period from the time of the pup being born, till the time when the pup may be said, in some sense, at least, to be self-sustaining—that is to say, taking to the water on its own account, which generally happens within six weeks to two months after its birth.

The PRESIDENT—In fact, the killing goes on during the stagey time.

Sir CHARLES RUSSELL—Yes to a slight amount.

Senator MORGAN.—Not of the animals engaged in reproduction.

Sir CHARLES RUSSELL.—Not as far as it can be avoided.

Senator MORGAN.—But they are divided geographically from each other by an instinct of nature.

Sir CHARLES RUSSELL.—I assure You, Sir, I would not rely too much upon that, because the lines are not so very sharply drawn as all that. There is a picture, if you turn to the diagram which faces page 22 of this report, which is a very expressive one, and I think, while, of course, it does not profess to be strictly accurate, it gives a very great idea of it.

The PRESIDENT.—You mean the killing in June and July.

Sir CHARLES RUSSELL.—Yes, the great killing is in the months of June and July. The earlier history, going back a good many years, shows they used to get the killing all practically done, certainly, before the end of July.

The PRESIDENT.—Before the stagey period.

Sir CHARLES RUSSELL.—But undoubtedly of later years, from the constant necessity of redriving, the period of killing has been extended, but it is as substantially shown on page 22.

It is true, as Senator Morgan, said—I have not suggested anything to the contrary,—that there are certain more or less clearly marked lines of demarcation, if I may use that word, between the young killable males and the others; but that is not very sharply defined, and the evidence undoubtedly shows that a number get mixed up in the herd, which have to be separated from the rest and driven back. You will remember that when I was dealing with the question of the alleged incapacity of domesticity of the fur-seal, that I cited the case of a pup called "Jimmie", which had been got hold of by a gentleman there, and he described it as a pup which the cow had dropped while being driven. So that they do get to a greater or less degree mixed up, although of course the object is to prevent that mixing.

On page 10 of the Report, they dwell on the misproportion—the alteration, I will say, of the proportion of males and females—very much as Professor Elliott does, and citing Professor Elliott—they dwell upon the large and increasing number of barren females; and in paragraph 56 of that Report, they mention that percentage of driving back, which shows the condition to which the race had then been reduced. They say in relation to these drives, the last sentence in this paragraph:

> The proportion thus turned away, according to the report of the special Treasury Agent in 1890, actually rose to ninety per cent of the whole number driven.

Now, it is a plain matter of arithmetic, if you drive 100 and only kill 10 of that hundred, that the other 90 are doomed to be driven and re-driven; and nobody can tell exactly how often, but at all events several times, before they meet their ultimate fate.

Then at page 11, they proceed to deal with the sealing at sea. They note the fact—in a marginal note, and it is not necessary, I think, for my purpose, to read the paragraph—that pelagic sealing is a further draft upon seal life. They give its history and development, beginning with independent native hunting, its growth, and then they mention the fact, which is not unimportant in connection with what has been said about 1884 and the marked decrease that was seen in 1884, that the first vessel which entered Behring Sea for the purpose of sealing was the "Mary Ellen", in 1884. That, I think, was an American vessel. I should have said that was the first of the Columbian vessels. Then they deal with the decrease observed on the Pribilof Islands, and the measures practiced to obtain a quota; and in paragraph 72 there is a

convenient reference to what I had intended to refer to except that I did not desire to be longer than I could avoid, as showing the straits to which they had then come, namely, that there was no curtailment in the number killed. They kept up the 100,000. They say:

72. No such curtailment, however, occurred. The Company holding the lease of these islands on fixed terms were not interfered with, but continued to take their full legal quota of skins without regard to the risk to seal life as a whole. Not only so, but instead of reducing the catch, the standard of weight of skins taken on the islands was steadily lowered so as to include a younger class of seals under the designation of "killables". Instead of skins weighing 7 or 8 lbs., those of 5 lbs. and (as we have ascertained on excellent authority) even of 4 lbs. and of 3½ lbs. have been taken and were accepted by the Company as early as 1889.

The further evidence that has since been obtained shows that the standard of weight was lowered at a considerably earlier period; and of course we say upon that that if the interest of the lessees had been the preservation of the fur-seal species and not to make a profit for themselves as against the rent which they had to pay the United States, and if it had been a question of regarding the interests of the race, that ought to have been a very clear and distinct warning which would have suggested that which Russian wisdom again and again suggested, as I have shown from the figures of killing during the Russian control, namely, periods of comparative rest; because it is a very startling and remarkable fact that whereas over the whole Russian period the average was considerably less—I will not pledge myself to the exact figure—than forty thousand a year, the average from 1867 down to 1889 works out somewhere very close to the point of one hundred thousand. And indeed if you take the exceptional slaughter, as I admit it to be, of 240,000 in 1868, the full one hundred thousand would be in fact, I think, maintained.

They then at the bottom of that page, in paragraph 74, summarize the causes of waste of seal life in the methods actually practiced upon the Pribilof Islands. I will not read them. And then they proceed to consider the allegations against pelagic sealing. We will see whether they deal with this matter fairly or not. They say in paragraph 77 on page 13:

77. Against the methods of pelagic sealing two principal lines of criticism and of attack have been developed, and both have been so persistently urged in various ways, that they appear to have achieved a degree of recognition by the uninformed altogether unwarranted by the facts, in so far as we have been able to ascertain them, though in both there is an underlying measure of truth. It is stated (1) that almost the entire pelagic catch consists of females; (2) that a very large proportion of the seals actually killed at sea are lost.

They then proceed:

78. It is undoubtedly true that a considerable proportion of the seals taken at sea are females, as all seals of suitable size are killed without discrimination of sex. This is, in part, however, a direct corollary of the extent and methods of killing upon the breeding islands, where, practically, in late years, all males reaching the shore have been legally killable, and where, as a matter of fact, nearly all the young males which land have been persistently killed for some years, with the necessary result of leaving fewer killable males in proportion to females to be taken at sea.

79. The precise bearings on the industry as a whole of the character and composition of the pelagic catch made along various parts of the coast and in Behring Sea are discussed at greater length elsewhere (§ 633 *et seq.*), but it may be here noted that the great surplus of females, resulting from the practice just alluded to, has certainly rendered the killing of considerable numbers of these at sea less harmful in its effect than it might otherwise have been.

"Less harmful than otherwise would have been" I may say means: not only that it tended to restore the balance but also that a considerable number of the females so killed were barren females. They then

proceed. My learned friend Mr. Robinson, I think, entered upon this yesterday, but I should like to read this passage:

80. To assume that the killing of animals of the female sex is in itself reprehensible or inhuman, is to make an assumption affecting all cases where animals are preserved or domesticated by man. Most civilized nations, in accordance with the dictates of humanity as well as those of self-interest, make legislative provision for the protection of wild animals during the necessary periods of bringing forth and of rearing their young; but the killing of females is universally recognized as permissible if only to preserve the normal proportion of the sexes. This is the case in all instances of game preservation and stock raising, and in the particular example of the fur-seal, it is numerically demonstrable that, in maintaining a constant total of seals, a certain proportion of females should be annually available for killing. The killing of gravid females must, however, be deprecated as specifically injurious, and in any measures proposed for the regulation of seal hunting should receive special attention.

Then they proceed to deal with the allegation of the percentage of seals lost at sea; and in paragraph 82—I read this yesterday and I therefore will merely summarize what they say upon it—that the statements are very vague; that the statistics or figures given are hopelessly confused; and confused in this way, that the number of seals fired at is confounded with the number killed, and in other cases it is often estimated that the number of rounds of ammunition disposed of represents the total number of seals that are actually killed.

I make one observation in that connection. I think one cannot but be struck in this matter that while they were endeavoring to show, and succeeded in showing, that a great many seals fired at were not captured, they do not show that the seals so fired at were either killed or seriously wounded. In other words in a great many instances, they do not show that they were hit at all. I have been struck also with this fact it is true that the specific gravity of the seal taken as an animal, is greater than the specific gravity of the water, and therefore that the seal will sink; but I notice that some of the witnesses point out a curious fact worth noticing in passing, that when the seal is hit in the head, which is where it ought to be hit by scientific marksmen, the effect is that its head goes down first in the water, and in that way the air which is already in its respiratory organs is preserved and so there is a certain buoyancy given to it and it will float for a short space of time.

I see no reason to doubt that scientifically at all; but that is not the point I was going to make allusion to. Where there is no such air in the respiratory organs to afford buoyancy to the seal, it will sink if its specific gravity is greater than that of the water. That may be conceded; but after a certain time, as we all know, the process of decomposition goes on, which thus occasions a fresh principle of buoyancy in the dead animal, just as it is in the case of a human body. In the case of a person who has suffered death from drowning the body sinks, disappears; but after the lapse of a certain time the body again floats, when that process of decomposition has gone on, and in that way the principle of buoyancy is illustrated. So with much inferior subjects. Dead cats and dead dogs, as we know, sink in the first instance, but come to the surface again. So it ought to be, and so it must be. There is no natural reason in the world why it should not be in the case of the seals. The process of decomposition, of course, is slower where the water is colder; but it goes on in the summer months. If this allegation of this tremendous loss of life by killing and not securing seals were true, one would expect to have some account of the presence of large numbers of floating dead seals over the surface of the water. I do not find there is any substantial evidence pointing in that direction at all; and I cannot therefore but think that the evidence on this point as to loss in that way is considerably exaggerated.

Another matter that they point to which again is not unimportant, is that whereas there is a consensus of opinion and evidence about the more or less depleted condition of the islands, there is not the same consensus of opinion as to the lesser number of seals to be found at sea; which is rather a significant fact. It is common ground that the numbers on the islands have diminished from their normal condition; that there has been a marked decrease, and a marked decrease of particular kinds as to sex and as to age; but there does not seem to be the same marked decrease in the number of seals perceived at sea; and the Commissioners, not unfairly, as I suggest to the Tribunal, say that that is one of the results of the system pursued upon the islands, that these seals driven and redriven, as they have been, make their escape to the sea, and do not return to the land. Except for the purpose of breeding they do not require to return to the land. I say that especially for the benefit of Senator Morgan because he thinks it is a necessity of their nature that they should return to the island to get their coat changed. I do not admit that that has been established as a scientific fact at all.

Senator MORGAN.—Sir Charles, in that connection, it has occurred to me that there must be some definite way by which these experts, or so called experts, can determine the age of a seal, and that relates somewhat to the color of its coat; for instance that two-year-olds are not of the same color as four-year-olds. They probably get at their results by observing the change in the color of the seals, and in the characteristics of its coat.

Sir CHARLES RUSSELL.—I will tell you, without pledging myself to be literally accurate, how that matter is upon the evidence. (Addressing the President) The Senator was asking me as to the evidence, Sir, remarking with reference to the alteration of the pelage, the age of particular seals. The evidence, as I understand it, is in this position. When the pup is born, it is nearly black.

Senator MORGAN.—And has no fur.

Sir CHARLES RUSSELL.—Or if so, very little. The impression is that it has some downy fur; but that may not be. It is nearly black. When it gets older it becomes gray. Then when it gets into the yearling and two-year-old and three-year-old class—I do not affirm positively—but I am not aware that any distinction is pointed in the color of the coat from two to three, four or five years of age; but when they get to an advanced age, there are undoubtedly marked differences, and in the case of males, one great difference is a hirsute appendage that it has, its whiskers, etc. I will not commit myself positively to what I have said, but I think, broadly speaking, that is about approximately correct. So far as the female is concerned, there is of course a difference in size between a female of two years and a female of five or six years, etc.; but I do not recall that there is any evidence of a difference in the color of pelage between the female of two years old and a female of greater age.

Senator MORGAN.—I think Mr. Elliott, in his capacity as an artist, has drawn those descriptions pretty vividly.

Sir CHARLES RUSSELL.—In which, Sir; 1874 or 1890?

Senator MORGAN. Between the ages of 2, 3, 4, and 5. I merely wanted to call attention to it.

Sir CHARLES RUSSELL.—We will see, Sir, if there is any more evidence bearing upon it.

Senator MORGAN.—Then there is a period when they, like the Queen's Counsel, begin to wear wigs?

Sir CHARLES RUSSELL.—Oh yes; the Queen's Counsel wear wigs; and sometimes people who are not counsel at all wear them. But that is not a case in point.

On page 17, Sir, they devote themselves—my friend Mr. Carter thinks most impertinently—to the consideration of the interests involved. Well, I respectfully think it very important. In paragraph 102, dealing with the interests on shore and the interests at sea, they say that

the only basis of settlement which is likely to be satisfactory and permanent is that of mutual concession, by means of reciprocal and equivalent curtailments of right, in so far as may be necessary for the preservation of the fur-seal.

And they go on to say that

the line of division between the shore and ocean interests is not an international one.

That I have already dealt with, because I have shown by the figures which I cited in answer to the question of the learned President the other day, that up to a certain point, and in certain years, the number of United States sealers exceeded those of Canada, although in the later years the Canadian vessels had exceeded the other. Then in dealing with the question of capital involved, they say, paragraph 105:

105. At the present time the actual value of the buildings, plant, and equipment of the North American Commercial Company, on the Islands of St. Paul and St. George, is estimated not to exceed 130,000 dollars (20,000 l.). Adding to this a further sum to cover other items of capital less directly connected with the islands themselves, the entire invested capital would probably be over-stated at 200,000 dollars (40,000 l.); and it is not to be forgotten that the Companies leasing the seal islands habitually do a profitable retail trade in supplies, etc., with the natives and others in addition to acquiring the seal-skins.

Then turning to the Canadian interest:

106. The estimated aggregate value of the British Columbian vessels employed in sealing, with their equipment, as they sailed in 1891, was 359,000 dollars (72,000 l.). It has been asserted that only a portion of this total, corresponding with the length of the period in each year in which these vessels are actually engaged in sealing, should be taken as the capital invested. This statement is, however, as a matter of fact, incorrect. The sealing-vessels are seldom used in or fitted for other employment, and nearly all of them remain laid up in harbour between the dates of the closing and opening of the sealing season—that is, between October and January, or February.

107. Adding to the above amount an estimate of the value of the United States sealing fleet in the same year, which, it has been ascertained, exceeds 250,000 dollars (50,000 l.), and may probably amount to 300,000 dollars (60,000 l.), an aggregate amount of capital of about 650,000 dollars (130,000 l.) is represented by the combined fleets.

The PRESIDENT.—Do those two paragraphs mean that there are special boats built for the sealing at sea?

Sir CHARLES RUSSELL.—Yes.

The PRESIDENT.—A special description of boats which would be unfit for any other fishing?

Sir CHARLES RUSSELL.—Yes, Sir; that is what it means. I do not think it would be correct to say they could not possibly be applied to some other purpose if this was prohibited; but they are built with that object, that design.

The PRESIDENT.—Perhaps you mean the small fishing boats that are let down from the schooners themselves?

Sir CHARLES RUSSELL.—Oh no; it means the schooners.

The PRESIDENT.—The schooners themselves are specially built?

Sir CHARLES RUSSELL.—They are fishing schooners—I used the word boat, but not in the small sense—fishing schooners, specially adaptable for this particular purpose, as I understand, but not unfitted for other kinds of fishing, or to be used in other kinds of commerce.

Lord HANNEN.—I suppose as in the case of fishing vessels of considerable size, they are fitted for fishing, and though they could be converted, it would be a considerable expense to convert them to other purposes?

Sir CHARLES RUSSELL.—No doubt that is so.

Senator MORGAN.—All these fishing schooners carry from five to fifteen small boats, armed with men. The evidence is that the boats go out and do the sealing.

Sir CHARLES RUSSELL.—Oh, no doubt. They do not shoot at the seals from the schooner really.

Senator MORGAN.—Not at all.

Sir CHARLES RUSSELL.—The real sealing is done by the boats that are sent out from the side of the schooner. That is quite true. I may state the information which Mr. Tupper gives me, which I have no doubt is correct. The great majority of these schooners, probably not all of them, are boats that come from the Atlantic side of America, and that have been principally used for fishing on that side. They are brought around to the west coast of America. There is, of course, a great field for fishing on the west coast, but like a great many other places where there are valuable products of that kind, the communication is so defective that if they caught fish, as there is no doubt they could, there is no means of readily utilizing them to any extent; so that the mere pursuit of the fishing industry, in the ordinary sense, of that word, is not profitable.

The PRESIDENT.—There is no cod-fishing organized on the northwestern coast as yet?

Mr. TUPPER.—So far as the Canadian portion is concerned, the deep sea fishing is not yet really developed.

Sir CHARLES RUSSELL.—What I have said applies to a great many of these schooners, not all of them, as Mr. Tupper has said. You are aware, Sir, that railway enterprise may, in a few years change the whole aspect of things there. The Canadian Pacific, which traverses the whole of that continent at that point and has its terminus at Vancouver, may in time with the further development of railway enterprise, make a very great change; and so regards Washington Territory.

The PRESIDENT.—You mean for the building of schooners?

Sir CHARLES RUSSELL.—No; I was talking about the development of fishing in the ordinary sense.

The PRESIDENT.—That is so as to allow these boats to be applied for other fishing besides sealing?

Sir CHARLES RUSSELL.—At some future time perhaps. They probably will not be fit when that time comes.

The PRESIDENT.—Our regulations must be framed before that time.

Senator MORGAN.—The difficulty about fishing in Behring Sea is that they have no sun-shine to cure the fish, and it is too far away from the market to permit of the fish being transported to the market.

Sir CHARLES RUSSELL.—That is, no doubt, the fact. I am not speaking from my own knowledge at all, but from what others say;—the difficulty is not really insuperable at all as regards the sun, because they can preserve the fish, if there were a market for it,—(that is the real difficulty)—quite sufficiently without any sun to dry it, if they have the salt.

The PRESIDENT.—I suppose that is the real reason,—that there is no market?

Sir CHARLES RUSSELL.—That is the real reason.

The PRESIDENT.—Of course, a great deal of the fish on the Northwest Coast goes to support this enormous family of seals.

Sir CHARLES RUSSELL.—Of course; and as I understand on Washington territory, Columbian territory and in Alaska from the North there is great promise from the great salmon rivers.

On page 19, the Commissioners discuss the "principles involved" in the paragraph so headed. They point out the necessity for protection both on shore and at sea. They point out, in paragraph 118 which excited my friend Mr. Carter's wrath, I think, the less danger at sea. They say:

> In sealing at sea the conditions are categorically different, for it is evident that by reason of the very method of hunting the profits must decrease, other things being equal, in a ratio much greater than that of any decrease in the number of seals, and that there is therefore inherent an automatic principle of regulation sufficient to prevent the possible destruction of the industry if practised only at sea.

And, finally, they refer to some other reasons. In paragraph 119, they say:

> It is, therefore, abundantly evident, if we judge by actual experience—

(that is historically true, I submit)——

> control of seal life beginning and ending with protection at sea, either partial or absolute, can do no more than palliate, and certainly cannot materially lessen, the danger to seal life as a whole, unless such control be devised and adopted in close co-operation with agreed-upon equivalent measures on the breeding islands.

The PRESIDENT.—I suppose that is one of the points upon which the American Commissioners differed and dissented from the British Commissioners.

Sir CHARLES RUSSELL.—I have no doubt they would have differed.

The PRESIDENT.—They have not stated it.

Sir CHARLES RUSSELL.—They have not gone into it at all. I say that that is historically true, because we do know that pelagic sealing, by itself, has never seriously threatened seal life in any quarter of the globe.

We know, on the other hand, that uncontrolled, or, as Senator Morgan preferred to call it, "indiscriminate slaughter" on land, has been the cause; and if it be answered by the United States, as it may be answered, that they are wise men who will not kill the goose that lays the golden egg—that self-interest will suggest their doing the proper thing on the island—our answer is that their self-interest was as great 20 years ago—10 years ago, as it is to-day, and yet—in face of that we have this—if you accept the report of Professor Elliott which I have endeavored to justify, without going into the details upon it—(it will be gone into in fully hereafter)—that they have pursued upon the island the most pernicious and most destructive system inflicting a very grievous injury upon the seal life, from which it may be long before it ultimately and completely recovers. Therefore we have no such protection merely resting upon their motives of self-interest; they must continue, whatever their own personal desires may be, to vary that course of dealing if they would make it a source of revenue to a great and prosperous community. I believe it is supposed that they have so much money in their treasury as to know not quite what to do with it, but if they continue to let the Islands to the sealers those lessees will pursue their own personal ends, looking to the limited interest they have got in the subject matter, however stringent Regulations may be devised for their control.

Now on page 21 the British Commissioners mention a fact which will become important, which I mention now in passing. It is paragraph

132. In the second sentence in that they are still dealing with Pribilof sealing and they say:

In pelagic sealing, the weather is usually such as to induce a few vessels to go out in January, but the catches made in this month are as a rule small. In February, March, and April the conditions are usually better, and larger catches are made. In May and June the seals are found further to the north, and these are good sealing months; while in July, August, and part of September sealing is conducted in Behring Sea, and good catches are often made till such time as the weather becomes so uncertain and rough as to practically close the season.

I think that is the nearest approximation to a precise statement as to date. As a matter of fact it may be taken—I do not think this will be seriously at all disputed—that as far as pelagic sealing is concerned, the weather makes it impossible to carry it on after the early part of September in Behring Sea. It is a pursuit which needs calm weather for its successful operations, and after the early part of September it is practically at an end.

The PRESIDENT.—Do those indications relate to the first months of the year—do they relate only to the Behring Sea or to the Pacific?

Sir CHARLES RUSSELL.—Those earlier ones relate to the Pacific.

The PRESIDENT.—I should think so the months being February, March and April.

Sir CHARLES RUSSELL.—Those are all south of the Aleutians.

The PRESIDENT.—They go later into Behring Sea, I am told.

Sir CHARLES RUSSELL.—They go later into Behring Sea.

Mr. Justice HARLAN.—They commence to go into Behring Sea sometime in early April.

Sir CHARLES RUSSELL.—I think there may be certainly a few such cases.

Mr. CARTER.—Do you mean the seals, or the sealers?

Sir CHARLES RUSSELL.—The sealers I am speaking of.

Mr. CARTER.—They are there in July.

Sir CHARLES RUSSELL.—No; they are earlier than that.

Sir RICHARD WEBSTER.—There is abundant evidence of their being earlier than that, in the United States books.

Sir CHARLES RUSSELL.—I do not quite follow this.

The PRESIDENT.—The sealers, I was referring to.

Sir CHARLES RUSSELL.—The sealers go into the Behring Sea, some of them, as Mr. Justice Harlan pointed out, in April; but some of them in May.

Mr. Justice HARLAN.—I meant the seals; they turn northward and commence to enter Behring Sea in April.

Sir CHARLES RUSSELL.—That, Sir, is quite true.

Now, on the next page, these partizan and unfair Commissioners having stated those circumstances of those earlier months, just let me point out the clear and emphatic way in which, (where they think themselves warranted), they express themselves about the effect of the pelagic catch in the early Spring.

On the top of page 22, there is a paragraph bearing on the point which Senator Morgan was good enough to mention a few minutes ago; it is in conformity with the evidence which will be referred to in detail. They say in paragraph 134.

With seals killed at sea, the skins are never found to be in a "stagey" condition, as has been ascertained by inquiries, specially made on this point, and there is, therefore, no naturally definite close to the time of profitable killing, such as occurs on the islands. The markedly "stagey" character of the skins at a particular season appears to be confined to those seals which have remained for a considerable time on the land.

I am reminded by my learned friend that there are some instances, (but I think so very few as to make the exception to the rule), of some damaged skins being taken at sea.

The PRESIDENT.—That would confirm the observation of Senator Morgan.

Sir CHARLES RUSSELL.—I should have thought, with great deference, it was the other way,—that if it be the fact that it is only a very rare exception to find a "stagey" skin on a seal taken at sea, it would seem to me to point in the opposite direction.

The PRESIDENT.—That shows that they must go on land, as you say, to shed their hair when they are in a "stagey" period.

Lord HANNEN.—What is meant by a "stagey" condition? Is it merely shedding their hair, or is it not something like an ailment of the skin?

Senator MORGAN.—Thinness is the cause of their shedding their hair.

Sir CHARLES RUSSELL.—I really do not speak with confidence about it, but I have understood it is very much like the case of another animal which I understand much better than the seal,—the horse,—it is like the shedding of the coat, only in a more aggravated character; namely, the disappearance of the older hair and the older fur, and the formation of a younger undergrowth.

The PRESIDENT.—With all hairy animals, that is the case.

Sir CHARLES RUSSELL.—But of a more aggravated and strongly marked character.

The PRESIDENT.—But can that go on in the water? It seems no, according to this.

Sir CHARLES RUSSELL.—With great deference, not so. I tried to explain this the other day—it is surrounded in mystery. It is one of the many points in connexion with the seals that we do not know a great deal about. I endeavoured to explain it the other day by saying this: in accordance with what we know of most animals, some process like stageyness or shifting of the coat occurs with all these animals that are fur-bearing.

The PRESIDENT.—That is general observation.

Sir CHARLES RUSSELL.—That is so; but my suggestion was (and probably it will be found to be the correct one) that in the case of seals which do not go on land, that the change of process is more gradual, so as to be less observable—that it takes place in the water more gradually so as not to be so observable. When I say "gradual", it is with great deference to what Senator Morgan said—that there is not any evidence to warrant the conclusion—I mean to satisfy one's mind to a fair conclusion that it is a necessary condition of the existence of the animal, that they all go on land; and, *exempli gratia*, when I say it is conclusively proved by the evidence which I have referred to more than once of Mr. Bryant who states that when the female pup leaves the island as a pup, it never returns to the island again, until it comes to deliver its first young.

Mr. PHELPS.—Who says that?

Sir CHARLES RUSSELL.—Mr. Bryant. I will read the passage.

Senator MORGAN.—The question would be, how would you come to find that out?

Sir CHARLES RUSSELL.—How is anything found out?

The PRESIDENT.—I think we must come to the conclusion that there is a great deal that is doubtful as yet as to these animals.

Sir CHARLES RUSSELL.—Undoubtedly. What is not known about the fur-seals would fill volumes, but I was following this up. On page 22, paragraph 138, you will see the straightforward way in which these Commissioners meet the allegation by admitting it. As to what is the allegation which can truly be made against pelagic sealing they say, in paragraph 137:

An equitable basis of protection is therefore not to be found in the adoption of any simple and corresponding close season, including a part of each year applicable to both shore and sea alike; but as pelagic sealing might easily be regulated by the adoption of a close season, while shore sealing might with equal facility be governed by a limit of number, it seems probable that some compromise of interest may be arrived at by a combination of these methods.

If certain months should be discussed as a close time for sealing at sea, it becomes important to inquire which part of the season is most injurious to seal life in proportion to the number of skins secured, and to this inquiry there can be but the one reply, that the most destructive part of the pelagic catch is that of the spring, during which time it includes a considerable proportion of gravid females, then commencing to travel on their way north to bring forth their young. It is on similar grounds and at corresponding seasons that protection is usually accorded to animals of any kind, and, apart from the fact that these seals are killed upon the high seas, the same arguments apply to this as to other cases.

Now if you refer back to the paragraph as to which you asked me a question a moment ago—paragraph 132 on the previous page—the time they are there referring to, and the catch, is in the month of January, when they are small; and February, March and April, when they say they are much more considerable.

The PRESIDENT.—Yes, but they say the most destructive part of the pelagic catch is that of the spring.

Sir CHARLES RUSSELL.—That is what I am pointing out.

Lord HANNEN.—Do not they mean destructive in the sense of it destroying gravid females?

Sir CHARLES RUSSELL.—That is it.

The PRESIDENT.—That seems to imply that that is a reason why it ought to be closed.

Sir CHARLES RUSSELL.—That is undoubtedly what they say. I am calling attention to it—as I should if I had no other reason for it—in order that the Tribunal may have a fair idea of their Report. I am calling attention to this as proof of the straightforwardness of the British Commissioners—that they are admitting that the pelagic catch which takes place to a small extent in January, to a greater extent in February, March and April, is the portion of the catch which includes the greater proportion of gravid females, and therefore is, in proportion to the catch, more destructive.

The PRESIDENT.—The pelagic catch is that of the spring. That would include—the end of the spring—the month of May. They propose a new close season, on page 25, from the first of May.

Sir CHARLES RUSSELL.—No, Sir, as they say, in May and June the seals are found further North, and these are good sealing months.

The PRESIDENT.—At page 25 they say the close season is to be provided from the 15th September to the first of May. It might be said to be those three months during which sealing is destructive.

Sir CHARLES RUSSELL.—I think I shall show you when I come to that part of the case, that that is not so. By that time the great bulk of the gravid females have got very nearly up to the Behring Sea.

Mr. Justice HARLAN.—By the first of May.

Sir CHARLES RUSSELL.—Well, I do not say they have all got into the Behring Sea by the first of May. However, it is rather anticipating what I have to say on that subject of regulations; but still we con-

sider that a date may be fixed for the commencement of the sailing of sealing vessels which would prevent their overtaking the gravid females going to the breeding islands.

The PRESIDENT.—You consider they have all passed into the Behring Sea before the first of May?

Sir CHARLES RUSSELL.—No, I think not. Indeed, this is a very convenient opportunity for emphasising my position in this regard. I have pointed out that these commissioners were dealing with the question of regulations, both on land and at sea everywhere for the fur-seal preservation. They were arguing upon the general assumption that regulations may and ought to be made affecting both land and sea.

The PRESIDENT.—Both Behring Sea and the Pacific.

Sir CHARLES RUSSELL.—Certainly both Behring Sea, the Pacific, and the islands.

The PRESIDENT.—Yes, and the islands.

Sir CHARLES RUSSELL.—They were not, as I have more than once said, writing in view of any construction of the Treaty, even if they had the Treaty, in fact, before them. They were dealing with the question generally; and assuming that the whole thing was under one Power's control, what would be the proper adjustment of regulations to apply to the whole; but that brings me back to the question I referred to yesterday, and as to which I wish to state distinctly what the position of the British Government is, as to which Senator Morgan yesterday rather challenged me.

The British Government are today as ready as they always have been to deal with the whole of this question inside and outside Behring Sea, the Pribilof Islands and the rest, but they decline to be parties so far as they can refuse to be parties to an arrangement by which the whole thing is to be preserved to the benefit of the United States, without any concession or guarantee from the United States; and, therefore, it was that I submitted to you, admitting I conceded it to be a point most arguable and difficult, as a matter for your consideration whether your jurisdiction extended outside Behring Sea on the Treaty.

On the assumption that your jurisdiction does extend outside Behring Sea I shall have to make some suggestion on that view presently. That is our position and I think it is a perfectly just and perfectly fair position. If there is to be no concession on the part of the United States and the whole of the Regulations and claim of the United States were simply to be directed to the preservation of the fur-seal for their benefit and for their benefit alone, I do not know what we have got to arbitrate about. It would have been a thousand times better to have admitted all these questions of alleged rights as raised in Article VI. Let them go back to the Ukase of 1799 or the Ukase of 1821 against which they struggled so severely. This new scheme of proposals is but an assertion again of the old exploded claim of territorial jurisdiction or claim of property, and except that it is put under circumstances very greatly changed it is the old claim put if possibly in a more utterly untenable form.

For the present I content myself with re-affirming our position submitting respectfully for your judgment and consideration the construction of the treaty which of course, you must construe for yourselves whether we raise the points or not, because within the ambit of that Treaty and that alone is your authority to make regulations at all. Having decided that point as you shall see fit to decide it, if you come to the conclusion your authority extends beyond, you will consider what would be fair and just and equitable Regulations in that wider area. Returning,

to where I left off reading the Report of the British Commissioners at page 23, they then proceed to their summary of general considerations. These are they:

(*a.*) The facts show that some such protection is eminently desirable, especially in view of further expansions of the sealing industry.

(*b.*) The domestic protection heretofore given to the fur-seal on the breeding islands has at no time been wholly satisfactory, either in conception or in execution and many of its methods have now become obsolete.

(*c.*) Measures of protection to be effective must include both the summer and winter homes, and the whole migration-ranges of the fur-seal, and control every place and all methods where or by which seals are taken or destroyed.

(*d.*) Although primarily devised for the protection and perpetuation of the fur-seal itself and of the sealing industry as a whole, any measures must be such as to interfere as little as possible with established industries, and such as can be instituted under existing circumstances.

(*e.*) Equitable consideration must therefore be given to the several industries based upon the taking of seals, and especially to the number of persons dependent on these for a livelihood and to the amount of capital invested, so that the measures adopted may be such as to recommend themselves on the ground of common interest.

(*f.*) The controlling Regulations should be so framed as to admit of varying degrees of stringency in accordance with the changing exigencies of the case.

Then they deal with improved methods in taking the seals, and restrictions in the number of seals taken and finally on page 25 is the specific scheme of regulations which they suggest as to which I may briefly say they mean a restriction in numbers on the Pribilof Islands, a zone of protected waters 20 nautical miles from the Islands, and a close season from the 15th of September to the 1st of May. That would mean that all that spring catch of January, February, March and April would cease to be made. Then they suggest alternative measures not inconsistent with the other, but elastic measures I prefer to call them, by which in consideration of a decrease in the number killed on the Islands there should be an extension of the zone. As regards these I do not propose to examine them in any detail.

The PRESIDENT.—That is not your scheme, you have your own to submit I suppose?

Sir CHARLES RUSSELL.—Yes. We borrow some features from this adapted to the altered circumstances which we will submit to you presently, but I have now in conclusion still two important topics to deal with namely a consideration of the American proposals and then a consideration of those which we venture to suggest for the acceptance of the Tribunal, and that will not occupy me, I hope, the whole of Tuesday.

[The Tribunal thereupon adjourned till Tuesday the 13th June at 11.30 a. m.]

THIRTY-SEVENTH DAY, JUNE 13TH, 1893.

Sir CHARLES RUSSELL.—Mr. President, I have up to this point, upon the question of Regulations, dealt with what I conceive to be, and what we respectfully submit ought to be, the general questions which ought to enter into that question; and, in order wholly or in part to remove prejudice, and in order also that the Tribunal should have a just appreciation of what the actual facts were, I endeavoured to show in some detail, and I hope I succeeded in showing, that, upon no view of the actual facts of the case, could it be established that pelagic sealing had been the main or even the principal cause of the depletion of the seal race which, it is admitted, has to some extent taken place; and though I have always admitted that pelagic sealing was a contributory cause, I showed also, or endeavoured to show that the true cause, the main and principal cause, was the pernicious system pursued upon the Islands: a system condemned by the voice of the strongest authorities representing the interests of the United States themselves; the great and main fact being, that instead of observing the moderation that had been pursued during the Russian *régime*,—that instead of observing periods of rest as the Russian Government did during that *régime*, the United States, beginning by permitting that extraordinary wholesale slaughter in the year 1868 of nearly a quarter of a million of seals, had permitted their lessees to take year by year the full *quota* of about 100,000 a year, unmindful of the fact that they were sapping the future male stock of that herd upon which, to a great extent at least, its future health and prosperity depended. The general considerations, which I have submitted should be borne in mind by the tribunal were, that the Regulations should be just and equitable in view of the common interest to be affected by them: that they ought to be such that the concurrence of other Powers might be expected in observing them, that it was a question of the *regulation* of rights upon the high seas, not a question of the *prohibition* or *annihilation* of those rights: and that the great object, of the Regulations is the preservation of the fur-seal species, and not the aggrandisement of the United States, or the putting them in a position in which they could reap a larger profit from the killing of the seals.

I submitted also that while you had no power to make direct Regulations upon the Islands, yet that you have the power, and I submit ought to exercise the power, of making your Regulations conditional upon the observance of certain distinct rules upon the Islands, the main one of which would be moderation as to the number killed, as to which the Russian example to which I referred, would seem to afford a safe and convenient guide; and lastly, as to general considerations, I submitted that in view of the incompleteness of the information which is even now possessed in relation to the conditions which affect seal life, your Regulations ought either to be for a definite period of time only, or if on the face of them they purported to have a longer existence or application, that there ought to be power, after the lapse of a reasonable time for either Power to denounce those Regulations and recede

from them. I would wish in that connection to add only this word, that if such a power as I have suggested of denouncing the regulations after a definite period of 5, 7 or 10 years, or whatever is thought reasonable by the Tribunal, then each party would be remitted to its original position, its original rights, whatever they were, unaffected and unimpaired, and that they each of them would be in a position to approach the consideration of proper Regulations in view of the wider experience which the actual working of such Regulations as you are pleased to propound will have apported; and that there is no reason to apprehend that in view of that further light thrown by experience upon the conditions of seal life so far as they may be affected by any Regulations that you formulate—there is no reason to suppose that these Powers could not come easily and satisfactorily to an arrangement of the matter.

Now having dealt with these considerations, but two things remain for me to do. The first is to consider the suggestion made on the part of the United States. The second is to assist the Tribunal by suggesting the character of the regulations which upon the part of Great Britain are suggested as being just and fit and equitable, in all the circumstances of the case.

First, as to the regulations put forward on the part of the United States. I do not know whether I am to regard that suggestion as put forward seriously.

Mr. PHELPS.—I think you may, Sir Charles.

Sir CHARLES RUSSELL.—Well, I really cannot so regard it. I cannot think that any member of the Tribunal will so regard it.

Why, Mr. President, it takes us back to the year 1799, to the year 1821, and we begin to wonder, in the face of this suggestion of the United States, at the moderation of the Emperor Paul, because all that he claimed was 100 miles from the shore, but in that memorandum of Baron de Tuyll was content with six miles over the area which corresponds with the area which is here in dispute.

Now what is this suggestion. I may describe it correctly thus: a deprivation for all time of the rights of British nationals over an area of the sea approaching 3,000,000 square miles; a deprivation forever of the rights of British nationals to fish for seals in that enormous area; a monopoly to the United States in that area; a monopoly to the United States which is to be secured in part by the co-operation and at the expense of Great Britain, because I take it that whatever scheme of Regulations is laid down by this Tribunal, each Power will be morally bound, internationally bound, to lend its part in the enforcement of those Regulations; and all this perpetual exclusion, this monopoly to the United States, this expense to Great Britain, without one fraction of security that the object of this Treaty, which is the preservation of the fur-seals, shall have been secured.

I have spoken of the extent over which this perpetual prohibition is proposed to extend. I have had coloured on this map of the northern hemisphere what it means. The north pole, of course, is in the centre of the map.

It is a worse state of things—a wider and a more reckless and unfounded assertion of the jurisdiction or claim of jurisdiction than in the time of the Ukase of 1799 or of 1821, because in those days this region was not a field of much commerce or of much enterprise. But what is the state of things to day? This prohibition extends over that area [Pointing to it.] *Here* is Vancouver, and *here* is Victoria, and this line traced upon the map is the new and established mail route to Yokohama and China, and I need not say that that means the following of commerce and of considerable commerce in its train, and yet over

this vast area there is to be this power reserved to the United States of searching, seizing, condemning any vessel found engaged in sealing or prosecuting a voyage with a view of sealing. I say, looking to the altered condition of things, the increase of population, the extension of commerce in the region affected, it is a proposition worse than the proposition propounded by the Russian Rules of 1799 and 1821 against the assertion of which both the United States and Great Britain protested. But it has other vices than the almost unbridled attempt to assert jurisdiction. What would be the cost of policing that enormous area? It would defeat absolutely its own object. What is the experience of everyone who has had to do with practical legislation or the enforcement of practical legislation in reference to these matters and who has read of these matters? Why, that if you put up excise duties applicable to a particular frontier line a high point, smuggling follows as a necessity. Here the United States propose to take a monopoly in the principal fur-seal producing area of the world.

What does that mean? It means driving up the price of the fur-seals to the highest point of popular demand: It means getting the highest obtainable price for the fur-seal. What does that mean? It offers the highest inducement that can be offered to persons to violate this area and to violate these Rules and to pursue an enterprise attended with some risk, but, if successfully carried out, with enormous profit; and as I said in the case of a great frontier when there is an article subject to a very high duty, so here, you would have reckless venturesome persons sending comparatively worthless ships to infringe the Regulations and so, defeating the very object at which the scheme is aimed. I observe in the Argument of the United States upon concurrent Regulations, at 205, dealing with this matter and dealing a much more limited area, that they say as to:

> What would it cost to maintain the naval police required to enforce this scheme of the British Commissioners of a 20 mile zone?

Will you be good enough to bear that in mind?

> How many armed steamers would be needed to guard effectually against the entrance of a trespasser within a prohibited zone, the circumference of which is upwards of 140 miles, in a region of thick and almost perpetual fogs? A million of dollars annually would be a moderate estimate of the expenditure required, and this must be paid by somebody, the Commissioners do not tell us by whom.

What then, I ask, would be the cost of policing this enormous area? Granted that Great Britain, as no doubt she would, pay proper respect to the Regulations of this Tribunal, and would discharge her proper duty in that regard, what would be the cost of policing this enormous area? Against United States citizens, against the people of Japan, it may be against the citizens of Russia, and against the citizens of British Columbia: aye, against the subjects of other Powers who have now no temptation from a remote distance to engage in this enterprise at all—you would have this state of things: seeing that these Regulations apply only to bind the nationals of Great Britain and the nationals of the United States you would have a resort to foreign flags—United States vessels sailing and sealing under foreign flags, and British vessels sailing and sealing under foreign flags: you would have an absolute impossibility of enforcing effectual safeguards, and an occasion at all points of international difficulty and international complication: and lastly, you would have, as I have already said, the impossibility of expecting the adhesion of foreign Powers which is contemplated by article VII of this Treaty. I have already pointed out in my introductory observations that by their own force and virtue your Regulations

would carry no legal sanction with them, they would carry with them very high moral sanction, but to give legal effect to them, as I have pointed out, legislation by the United States would be necessary—legislation by Great Britain would be necessary and I have to point out, while I am perfectly certain that Great Britain would not fail in doing its duty in paying due respect to the Regulations of this Tribunal that such a scheme as this would present enormous difficulties, in its passage through an assembly whether it be the Congress of the United States or through any popular Parliament. No, Mr. President, this scheme, if scheme it can be called, has all the evils which could be well concentrated in any scheme to be suggested. Let me read the first and second of these propositions. First that no citizen or subject of the United States or Great Britain shall in any manner kill.

So that however discriminatingly we could kill—killing barren female or only old males,—nevertheless the prohibition is absolute. Next it extends over the area that I have mentioned with a ludicrous qualification provided that it shall not apply to such pursuit and capture as may be carried on by Indians on the Coasts of the territory either of Great Britain, or the United States for their own personal use.

We get back to that old condition of things in which whoever framed this paper seems to have thought that the Indians on this coast, went about half naked or with a seal-skin girt about their loins, a state of things which no longer exists at all, nor has for many, many years. They wear clothes like the white men, and tall hats I am told on their Sundays and holidays like the white men, the tall hat being universally admitted to be a proof of advanced civilisation. But "for their own personal use"; which, as I understand, means if they want a skin with which to gird about their loins, or for their wives or for their children, they may have it; but to sell it, no; and they are to do this in vessels propelled wholly by paddles. Oars, in the ordinary acceptance of the word, are not to be admitted; and they are not to be manned by more than two men. Two men and a boy would be fatal. Two women and a man would be fatal; and all this is to be done "in the way anciently practised by such Indians". Who is to fix the point of what is "ancient"? And who is to tell us what was anciently practised by such Indians? What are the sanctions that follow any breach of these regulations? Why, that any ship actually engaged in killing, or the pursuit, or capture of seals, or prosecuting a voyage for that purpose, and I want to know how that purpose is to be ascertained,—only by search, of course,—supposing, for instance a vessel engaged in whaling; how is it to be ascertained whether she may not be also contemplating a voyage for the purpose of sealing, or in the days not remote when the great general fishing wealth of this region may be turned to profitable account by new modes of access to rapidly rising markets and as population grows and as the means of communication increase, for the purpose of fishing; and all these are to be harased over the enormous area of nearly 3,000,000 square miles at the will and pleasure of the authorities of the United States or at the caprice of those in charge of its Revenue vessels and subjected to search upon the high seas and if found prosecuting a voyage or engaged in sealing, then what is to follow? The ship of Great Britain is to be carried into an American port, condemned, and the men sent adrift, as they were cruelly sent adrift in the case to which I have drawn attention, thousands of miles and penniless, away from their homes. The very contemplation of such a scheme makes one feel as I feel, I must confess, indignant, especially when it is to be borne in mind that this is the scheme which it must be admitted requires legislative

action both on the side of Great Britain and the United States to give effect to it. I should like to know what would have been the scheme which the United States would have put forward if its claim of territorial jurisdiction, its claim of property in the individuals and in the fur-seals collectively had been established as clearly as it is, I submit, now established to be non-existent? Suppose, when these first five questions had been framed, Great Britain had chosen to say, "It is a remote region; it is not a matter of much consequence to us. The thing we feel most about is this assertion of right upon the high seas to seize and search the ships of our nationals; but suitable reparation being made for that in the past, we care not about it in the future; by all means have your assertion in relation to Behring Sea,"—those assertions were confined to Behring Sea,—and yet absolutely the result sought to be pointed at by this so-called suggestion for Regulations is infinitely worse to Great Britain than if she had never challenged the right which the United States has claimed at all.

Mr. President, I cannot seriously consider this scheme. It is selfish; it is one-sided; it is inequitable; it is unworkable, and it is entirely framed in oblivion of the fact, if fact it be, as we submit it is, that we have established that the United States have in no form in which they have ventured to put it forward any legal rights in this matter at all, except the rights belonging to their territorial ownership, and those rights only.

Now, Mr. President, I turn to the suggestion which we think it right to offer, which at least, I hope the Tribunal will think, we have considered in a serious, in an anxious, in an equitable spirit, and with the desire to do something to assist this Tribunal in arriving at a just and, at the same time, a practical conclusion in this matter.

The first suggestion which we submit to this Tribunal is, assuming that we are right that Regulations and not prohibition is the question, that in future all vessels engaged in pelagic sealing, belonging either to Great Britain or the United States, shall be permitted to do so only on condition of obtaining a license and carrying a distinctive flag; that is to say, that no ship belonging to a British national shall be allowed at the mere will and pleasure of its owner to engage in pelagic sealing, and that the same shall apply to the ships owned by the citizens of the United States, that as a condition of their right to engage in pelagic sealing at all, they shall be furnished with and shall obtain a license and bear a distinctive flag. This presents no difficulty and no complication. There are four ports, and four ports only, belonging respectively to the United States and Great Britain, from which the pelagic sealers set forth. Those are San Francisco, Port Townsend, Vancouver, and Victoria; and there can be, therefore, no difficulty in providing a scheme by which there could be at each of these ports a Licensing Authority to license sealers to pursue pelagic sealing. I put that in the first place for a reason which I think you, Sir, will appreciate; it is that experience of similar systems has shown that if you pursue that licensing system, you have some guarantee for the character of the persons who are licensed, and you have persons who are giving by their position and by their means and by their character some guarantee that they are entitled to pursue this calling. But that is not all, nor principally what is the advantage. It is that once you introduce a system of licenses you constitute automatically an effective police force. How? Because, to begin with, you make the whole number of those who have licences a police force upon those who have none. Those who have the privilege of the license will, in their own interests, do all they can to safeguard and secure it, and to see that no vessels that do not comply with the

legal conditions of the license engage in pelagic sealing at all. That is the first point.

The next point is this, that as regards the licensees themselves, when you proceed to consider the question of Regulations relating to zone or to close time, one or the other or both, you make each licensee a police or detective upon every other licensee to see that such licensee gets no advantage over him, the particular person, either by entering within a prohibited zone and thus securing an undue advantage to himself or entering a particular Sea before a particular time if a close time is fixed. So that in that way you get, automatically working to a large extent, a system of checks and restraints for the enforcement of such Regulations as are laid down. That is the first, therefore, that we should respectfully suggest. It has been suggested by the British Commissioners in their most candid Report,—I think it is in their Report; at all events, I know in the Supplemental Report which I am not stopping to refer to,—that, for reasons which will be more apparent when I come to consider the other suggested Regulations, that nothing but sailing boats should be engaged in pelagic sealing; in other words, that steam vessels should be excluded.

Now I come to the next question. I deal first with the area in which it is admitted without any conditions at all that the Tribunal has complete power to make such regulations within the scope and for the object contemplated in the Treaty, namely, the eastern part of Behring Sea. First of all, the point that naturally occurs to one is the question of zone round the islands. I shall be able to afford a very good illustration of what has been found to be, or considered to be, reasonable and practicable in the case of other islands further to the west in the case of Russia, but I reserve that for the later period of my argument.

Now the British Commissioners have suggested a 20 mile zone round the island, and that has been treated with some derision by my learned friends in their arguments; and Mr. Coudert who was most fair and candid in his, with the exception which I am about to mention, addressed an argument to show that seals were not got within 20 miles of the island. I will read the passage in a moment. It is on page 635 of the print. It is only a word, but it is a little disingenuous, I think. He is citing the evidence of Ohlsen of the steam schooner "Anna Beck" and he states through the Victoria Daily Colonist of August 6th, 1887, that anyone who knows anything of sealing is aware that such a charge, that is catching seals in Alaskan waters within three leagues of the shore is ridiculous as we never took fur-seals within 20 miles of shore; and Mr. Coudert proceeds, "This may explain why that 20 mile zone was admitted by the Commissioners". That was not ingenuous on the part of my learned friend. I will not say that it was intentionally disingenuous, but I do not think that he could have quite realized the matter. What that points to, Mr. President, is this, that a 3 mile zone, which is the territorial zone generally admitted, means more than a 3 mile zone. It means that owing to the circumstances of climate principally, the atmosphere in Behring Sea, that vessels will not run the risk of approaching anything near the distance which they might in fact approach the islands, if they were minded so to do; in other words it means not that there are not seals within a 20 mile zone of the island—not that—but that they are afraid to approach, although the zone is only 3 miles, within 20 miles of the islands, because of the serious penalty that might fall upon them if they found themselves within the territorial waters, and what I want to impress upon this Tribunal is that a 20 mile zone means a great deal more than a 20 mile zone. A 20 mile zone means for the prudent navigator, for the prudent sealer, for the prudent

pelagic sealer, a zone probably closer to 40 miles than 20 miles, because he cannot always perfectly satisfy himself as to the distance he is from the nearest land, and looking to the serious penalties that would follow from an entrance within the prohibited area he keeps outside that area. I do not stop to consider whether the exact figure that the Commissioners have mentioned, of a 20 mile zone, is adequate. What I do wish to point out is that if you think that 20 miles is not adequate you ought to have present in your minds that 25 miles means probably 50, and 30 miles means probably 60, and that in the case in which the penalties necessarily would be serious which would attach for an infringement of regulations as to zone that prudence and the instinct of self-interest keeps the pelagic sealer away, and widely away, beyond the outside limit of that zone.

It is important in this connection to consider two things: what are the facts in relation to the greater or less plentifulness, if I may use that word, of seals during the important months which we have to consider, namely, the months of June, July, August and part of September, for pelagic sealing is at an end in the early days of September unless there is exceptionally fine weather, and then it may be prolonged for a few days longer.

The PRESIDENT.—In Behring Sea.

Sir CHARLES RUSSELL.—Yes, Sir, all I now say has reference to Behring Sea, and to Behring Sea only.

There are two matters to be dealt with in relation to that. First of all, the question of what is the evidence as to whether or not during those months that I have mentioned which are the important months, the vast majority of the seals are not either upon the islands, or within a comparatively small zone of the islands themselves, and, further, there will be an important consideration in this regard applicable particularly to the question of the animals who have delivered their young.

Upon the first point I should just like to say a word or two for the purpose of illustrating what I have to say, for I am, as you of course understand, not reinforcing these points I am making, with a fulness which I should be able to if it were not that I am following the plan which I have described, of merely stating our case in general outlines, and my learned friend will fill up the picture. If you would turn to the seal chart nº 6 of the United States Counter Case you will see what I mean. In order to save you trouble and that you may see what I mean, will you refer to this map also, Nº 4, where you see the lines crossing and recrossing. It is also a United States map in their Counter Case, and it shows the series of voyages the results of which are set out in the map to which I first called attention. I only want you to see the way in which they traverse it.

Mr. PHELPS.—It is the cruising map.

Sir CHARLES RUSSELL.—Yes, the result of the cruising is shown in the map to which I have called attention. That is all I want to show you in that connection.

Senator MORGAN.—That is the map, in connection with Hooper's report.

Sir CHARLES RUSSELL.—Yes, Hooper and Coulson.

Now forgive me asking your attention to this. You will see a double circle. Will you be good enough to note what the description of this chart is. It is Counter Case Chart Nº 6, showing the position and number of seals observed and reported by the United States naval vessels in Behring Sea, during the season of 1892. So that this was, as far as they could do it, not merely general and vague observations,

but accurate observation, numerically taken, of the actual number of seals that they saw and were able to count, and the result of that is shown in the number of little red ticks that are to be found in Chart 6. I may say it has been very carefully and correctly done, as far as we can judge, considering the difficulty of doing it, but looking to the size of that map, one of those little ticks which represents a seal covers a space of something like a mile, still it is done as well as it could be done; and in some instances the number recorded in the logbook of the particular ship has been checked with the number of ticks to be found on this map, and they have been found to coincide, I believe, accurately in the number that have been checked.

There is one other of the 29th July, 1892, where there is quite a cluster just north of the Akutan Pass.

Now I wish to call attention to what these voyages were. They were voyages during the months of July and of August, and you will observe that within the St. Paul and St. George circle zones what is printed across that area is this: "Seals within this area very numerous". The circles are quite properly described there looking at the character and shape of the islands; the outer line of the circle will be in some places more than 20 miles from the nearest land, but the circle is at the least 20 miles in each case from the nearest land. Now we have taken the trouble of checking their log books, and by absolutely computing the seals that are here found in these numerous voyages extending over the months of July and August, to see what they total up to. The total shown on the map itself is 1,068 seals altogether, outside the 20 mile zone, and computing the entire number in the log, 1,800 seals. That is the result of the observations although they say in their logs that they did not begin to count until 5 or 8 miles from land.

I need not say that when you bear in mind that the notation of one of these seals upon this map occupies the space of nearly a mile or about a mile, that does not show a very large accumulation of seals outside the 20 mile zone, and when you have that in connexion with the statement that within the 20 mile zone the seals were very numerous, it does go some way to establish the proposition that during that which is the important time to consider, the great bulk of the seals are to be found within that very limited area. Of course, you will bear in mind what I have said on another branch of the case that our case is that there is a considerable number of seals that do not go to the Islands each year and some that do not go for years. I referred to the evidence of the United States Government Agent, Captain Bryant among others, who expresses the opinion that in one class particularly the female seal does not go from the time it leaves as a pup till it comes back to deliver its young; that would, be in the third year, and Bishop Veniaminoff puts the same date. The same argument may be based upon map 4 to which I have already referred. It refers to a corresponding period in 1891. This map refers to 1892.

Now there is another very important matter and that is this question of whether, and if so, to what extent the seals that come to sojourn on the Pribilof Islands go, and if so to long distances to feed during their sojourn on the Islands. I referred to this matter on Friday as showing the incompleteness of information that we have on this very important point. But there are certain facts in regard to the question which are not in dispute, and I beg that these undisputed facts be first noted. First it is an undisputed fact that the breeding males which come to take up their place on the rookery and await the arrival of the cows do not during the whole of the time that they are on the Islands and when

the work of procreation is going on feed at all; that is an undisputed fact between us. The universal testimony is that they come on the Islands fat and sleek and in good condition, and that they leave them, having stayed by the Islands during the whole of the time lean and emaciated; and they do not during that period seek any sustenance at all. Nature seems to have made the curious provision for them that in the early part of the year and in the winter they have been able to accumulate an amount of fat upon which practically they subsist during this very exhaustive period of their existence. So much as regards the breeding males, that is common ground. But it is also common ground, as you will find when you come to the case of the holluschickie or young males; but as that is not so clearly admitted between us, I must ask leave to call attention to one or two small points of evidence on the matter. I will rely in this connexion, in the first instance upon what appears in the United States documents themselves put forward in their Case and Counter Case. In their Case on page 121 they make this statement:

Both Captain Bryant and Mr. Morgan say that in their opinion the bachelor seals feed very little while located on the islands, and Mr. Glidden states that the bachelors once in a while go into the water, but remain in the vicinity of the islands.

The bachelor seals, the holluschickies are the young males who have not yet been in a position to acquire a place upon the rookery.

Mr. Glidden states that the bachelors once in a while go into the water, but remain, in the vicinity of the islands' Anton Melovedoff, the native chief on St. Paul Island for seven years (1884–1891) states that he has found that the seals killed in May and early June were fat and that their stomachs were full of food, principally codfish, and that later in the season they were poor and had nothing in their stomachs, and that, in his opinion, none but the mother seals go out in the sea to eat during the time the herds are on the islands.

I will deal with the mother seals in a moment.

And his opinion in this matter corresponds with the views of natives and whites who have been long resident on the Pribiloff Islands.

Further evidence on that point is to be found in collateral testimony in the United States Argument under the title "Feeding" page 159. In that page the last paragraph but one.

The Holluschickie (batchelors) do not go out to feed. When they come in May there is plenty of fish in their stomachs but after June there is nothing.

Again:

Young wigs go into the water, but during the breeding season hang about the rookeries never going far from shore.

And again on the top of page 160.

I have also observed (says Mr. Fowler) that the male seals killed soon after they come to the Island are fat and their stomachs filled with food while those killed in the latter part of the season are poor and lean and without food in the stomachs.

Then Mr. Fratis:

I do not think the batchelors go to feed from the time they haul out until they leave the islands in November for I have observed the males killed in May are fat and their stomachs full of fish, mostly cod fish, while the males killed in July and afterwards are poorer and poorer and their stomachs are empty.

I pass the next and go to Nicoli Krukoff:

I think the batchelors do not eat from the time they arrive till they go away, and I think so because the seals Killed in May and early June are fat and have plenty of food in their stomachs, while those killed later than June are poor and their stomachs are empty and they get poorer and poorer until they go off in November.

Then:

I have found that the seals killed (says Molovedoff) in May and early June were fat and that their stomachs were full of food principally cod fish, and that later in the season they were poor and had nothing in their stomachs.

Then Mr. Redpath:

Young males killed in May and June when examined are found to be in prime condition and their stomachs are filled with fish—principally codfish, but those killed later in the season are found to be poor and lean and their stomachs empty, which shows that the males rarely leave the islands for food during the summer months.

Mr. Webster is to the same effect, and then he proceeds to express an opinion about the females going out to feed which I will now proceed to consider.

Senator MORGAN.—Is there any evidence that you have seen contradicting the statement you have just read.

Sir CHARLES RUSSELL.—No not that I am aware of. There are statements scattered here and there which say they do not feed much which would imply therefore that they feed a little—during the latter period of their sojourn on the Island they do begin to feed but not in the months I have mentioned.

Lord HANNEN.—The probability is when the sexual excitement begins they are provided with a greater supply of fat as in the case of the old ones, and that probably arises at the same time—the increase of fat in the males—which serves them as a reserve force.

Sir CHARLES RUSSELL.—It may be. It obviously is so in the case of the older males, but these observations that I have been just reading do not apply to the older males.

Lord HANNEN.—No, it was *apropos* of that I made the observation that at the same time that the sexual passions were roused there is a greater supply of reserve and fat.

Sir CHARLES RUSSELL.—And the real question is that nature having made that extraordinary provision in the case of males is there any reason for supposing that nature has not made a similar provision in the case of the females. That is a question that is not admitted, and I will call attention to the evidence in a moment about it. But it is a very remarkable thing that in all the seals that have been killed you will find some reference made to them in what I am about to state, that what is stated as true of the males is true of the females—that until you come to the end of the period when their nursing operations are nearly over then apparently they take again to food.

I will deal with the females in a moment, but there is also a passage in the earlier Report reprinted in 1881 what we have been calling the brown book report, of Mr. Elliott bearing on the same subject; and he does not restrict it, though I do not say he does not mean to restrict it (as a matter of fact he does not) to sex. He says:

I have examined the stomachs of hundreds which were driven up and killed immediately after their arrival in the spring, near the village; I have the word of the natives here, who have seen hundreds of thousands of them opened during the slaughtering-seasons past, but in no single case has anything ever been found, other than the bile and ordinary secretions of healthy organs of this class, with the marked exception of finding in every one a snarl or cluster of worms, from the size of a walnut to a bunch as large as a man's fist. Fasting apparently has no effect upon the worms, for on the rare occasion, and perhaps the last one that will ever occur of killing three or four hundred old bulls late in the fall to supply the natives with canoe skins, I was present, and again examined their paunches, finding the same *ascaridæ* within. They were lively in these empty stomachs, and their presence, I think, gives some reason for the habit which the old bulls have (and others do not) of swallowing small water-worn bowlders, the stones in some of the stomachs weighing half a pound apiece, in others much smaller. In one paunch I found over five

pounds, in the aggregate, of large pebbles, which, in grinding against one another, I believe, must comfort the seal by aiding to destroy, in a great measure, those intestinal pests.

Now, I turn to the wider consideration of the case of the females; and I turn to the British Commissioners' Report, section 232, where the matter is carefully gone into at page 39 of that Report.

Some particulars are given on a later page respecting the abstention from food of the fur-seals while remaining upon or about the breeding islands. It appears to be certain that the mature males doing duty on the breeding rookeries do not feed at all during the breeding and for some time at least after landing females do not leave the rookery grounds in search of food.

That is a common fact admitted, that for some weeks after,—this is a fact not in dispute,—the female landing and giving birth to her pup, she does not for some weeks leave the island, and, therefore, for some weeks does not obtain any food at all. That is an admitted fact. The witnesses vary as to the length of time, but the body of evidence turns to that being something like three weeks.

Mr. CARTER.—We do not concede any period of several weeks.

Sir CHARLES RUSSELL.—The shortest time that is put (I assure you, Mr. Carter, we are not making these statements without considering them).

Mr. CARTER.—When you say that we concede it, I submit that you do.

Sir CHARLES RUSSELL.—Well, if you will be kind enough to pay attention and look at the evidence, I think you will find I am right. There is not one witness who speaks on the subject who was called by the United States who does not admit that for a considerable period they do not leave the Islands after giving birth to their pup, and the shortest period, I speak from recollection but after careful examination, is a period of 17 days. Other witnesses put it longer, and I say the bulk of the testimony fixes it at about three weeks.

My learned friend, Sir Richard Webster will read this for me.

Sir RICHARD WEBSTER:

There is no apparent reason why the "holluschickie," or young males, should not go to sea in quest of fish. Singularly enough, however, though animals of this class have been killed by hundreds of thousands upon the breeding islands under all conceivable conditions of weather, and often within less than an hour of their deportation from their hauling-grounds, the almost universal testimony is to the effect that their stomachs are invariably found to be free from food.

Then follow some passages about male seals that I need not now read again. I may say the first number killed was 20 seals, and the second 98.

Then n° 235 is—

From the large North Rookery on Behring Island, 5th September, an adult male or "seacatch," two females, and an unweaned pup, were driven directly from the rookery ground, about 200 yards distant, and killed, by permission of the authorities, for presentation by us as specimens to the British Museum. The stomachs of all four were completely empty, with the exception of a few worms in those of the three adults. Not only the pup, but the females, and even the old male, were fat and in good condition.

Sir CHARLES RUSSELL.—Now, on the next page, paragraph 242:

Perhaps the most notable feature in regard to this food question, and one directly consequent on the prolonged abstinence of the seals from food while on and about the islands, is the entire absence of all excrement on the rookeries and hauling grounds. Captain Bryant appears, however, to be the only author who has specially mentioned this particular and striking fact. He writes:

The fact of their remaining without food seems so contrary to nature, that it seems to me proper to state some of the evidences of it. Having been assured by the natives that such was the fact, I deemed it of sufficient importance to test it by all the means available. Accordingly, I took special pains to examine daily a large

extent of the rookery, and note carefully the results of my observations. The rocks on the rookery are worn smooth and washed clean by the spring-tides, and any discharge of excrement could not fail to be detected. I found, in a few instances where newly-arrived seals had made a single discharge of red-coloured excrement, but nothing was seen afterwards to show that such discharges were continued, or any evidence that the animals had partaken of food. They never left the rocks except when compelled by the heat of the sun to seek the water to cool themselves. They are then absent from the land for but a short time. I also examined the stomachs of several hundred young ones, killed by the natives for eating, and always without finding any trace of food in them. The same was true of the few nursing females killed for dissection. On their arrival in the spring they are very fat and unwieldy, but when they leave, after their four months' fast, they are very thin, being reduced to one-half their former weight.

Now, it does not seem more remarkable that the male, subject to the trying conditions he is subjected to during this period, should go without food than the nursing female should go without food.

The matter is further referred to at paragraph 242, on the top of page 42.

In a note appended to the above by Professor Allen, that gentleman writes: Steller states that in the numerous specimens he always found the stomach empty, and remarks that they take no food during the several weeks they remain on land; Mr. Dall confirms the same statement in respect to the present species, and Captains Cook, Weddel, and others, who have opportunities of observing the different southern species, affirm the same fact in respect to the latter. Lord Shuldham long since stated that the walrus had the same habit, though its actual fast seems somewhat shorter than those of the eared seals. . . . . This singular phenomenon of a protracted annual fast during the period of parturition and the nursing of the young—the season when most mammals require the most ample sustenance—seems not wholly confined to the walruses and eared seals. So far as known, however, it is limited to the pinnipedes; and, excepting in the case of a single member, the sea-elephant, to the two above-named families. By some of the old writers the sea-elephant was said to feed sparingly, at this time, on the grasses and sea-weeds that grew in the vicinity of its breeding places, but the weight of the evidence in respect to this point seems to indicate that this species fast similarly to the eared seals and walruses during the period it resorts to bring forth its young.

243. The fur-seals on Juan Fernandez are likewise reported, and without qualification as to sex, to abstain from nourishment during the breeding season: "Toward the end of the month of June these animals come on shore to bring forth their young, and remain to the end of September without stirring from the spot, and without taking any kind of nourishment."

Those are extracts from the authorities mentioned. Then the British Commissioners proceed:

Though not at the time aware of Bryant's statement, above quoted, the absence of excrementitious matter was one of the first points noted and remarked on by us after landing upon the Pribyloff rookeries, and it is to the absence of such matter alone that the continuous herding together on one spot for several months of so many thousand animals is on sanitary grounds rendered possible. It became obvious that so soon as the seals commence again to feed, it must be absolutely necessary for them to abandon their crowded quarters on shore. The evidence thus afforded, that the females do not feed to any notable extent until the young are practically weaned, or, at all events, until very late in the suckling season, is perhaps more definite than that given in any other way.

I think there is only one other passage that I have to refer to in that connection. It is on page 54 of the Report commencing with paragraph 303, which my learned friend will, no doubt, kindly read for me.

Sir RICHARD WEBSTER.—Paragraph 303:

The feeding habits of the seals, and the distances to which seals engaged in breeding on the islands may be supposed to go for food, as well as the period of the breeding season at which excursions in search of food begin to be made, are important because of their direct bearing on the limits of protection which might appropriately be accorded about the islands at the breeding season.

Then 304 deals with the full grown bulls; and 305 is:

304. The full-grown bulls, or beachmasters, holding stations on the rookery-grounds, undoubtedly, in the majority of cases—if not invariably—remain on duty throughout

the breeding season and to the close of the rutting period without seeking food. The young again, born in any particular season, are not weaned, or not fully weaned, nor do they, under normal circumstances, leave the immediate vicinity of the shores till the time of their final departure.

305. It is thus only the classes of bachelor and female seals that can, under any circumstances, be found leaving the islands in search of food during the breeding season. Of the females, the yearlings associate with the bachelors. Some of the two-year-olds may seek the vicinity of the rookery-grounds for the purpose of meeting the males, but probably they do not long remain there, while it is believed that most of them are covered at sea. Barren females, again, whether without young from age, from an insufficiency of males, or inefficient service, are not in any way permanently attached to the islands at this time.

306. The remaining—and, at the time in question, most important—class is that of the breeding females. These, some time after the birth of the young and the subsequent copulation with the male, begin to leave the rookery-ground and seek the water. This they are able to do because of the lessened interest of the beachmasters in them, and more particularly after many of the beachmasters themselves begin to leave their stands. Thus, by about the middle of August, probably only one-half of the females, or even less, are to be seen at any one time on the rookeries. Snegiloff, the native foreman in charge of the rookeries on Behring Island, expressed the opinion that the females first leave their young and begin to frequent the water about a month after the birth of the young. Bryant says about six weeks. Other authorities are less definite on this point, but, according to observations made by ourselves, the mothers and young were present on the Pribyloff rookeries in approximately equal numbers in the last days of July, while, on the same rookeries, in the third week of August, the young largely outnumbered the mothers present at any one time, and, in so far as could be ascertained by observation, the females were disporting themselves in the sea off the fronts of the rookeries.

307. It is very generally assumed that the female, on thus beginning to leave the rookery-ground, at once resumes her habit of engaging in the active quest for food, and though this would appear to be only natural, particularly in view of the extra drain produced by the demands of the young, it must be remembered that with scarcely any exception, the stomachs of even the bachelor seals killed upon the islands are found void of food, and that all seals resorting to the islands seem, in a great degree, to share in a common abstinence. While, therefore, it may be considered certain that after a certain period, the females begin to seek such food as can be obtained, the absence of excrementitious matter on the rookery grounds, elsewhere referred to, show that this cannot occur till towards the close of the breeding season. It may, further, be stated, that there is a very general belief among the natives, both on the Pribyloff and Commander Islands, to the effect that the females do not leave the land to feed while engaged in suckling their young, and that neither of the two females killed in our presence for natural history purposes on Behring Island, on the 5th September, had any trace of food in the stomach, though killed within a few yards of the rookery from which they had just been driven. Also bearing on the same point is the statement made in a memorandum received from Her Majesty's Minister at Tôkiô, based on information obtained from a gentleman fully conversant with the habits and haunts of the fur-seal of the western side of the North Pacific, as follows: "It is sometimes stated that the breeding cows are in the habit of leaving the rookeries to fish for the support of their young, but the experienced authority on whose remarks these notes are founded is not of this opinion. He has never found food inside the female fur-seal taken on the breeding grounds.

Sir CHARLES RUSSELL.—Now it is not unimportant, I think, to note there, that the two females who were killed, whose migration is vouched for as a fact, were killed as late as the 5th of September; and when it is borne in mind that all the pup-bearing females have got to the Pribilof Islands admittedly by some where about the middle of June—certainly all practically by the 20th June,—it is a remarkable fact there are two female seals bearing pups killed on the 5th of September, and therefore very late in the season, and yet even without any particle or trace of food in their stomachs.

Now the British Commissioners seem to have weighed this matter very carefully and judiciously, and I think in paragraph 308 they probably state what is the actual fact. They say:

It appears to us to be quite probable, however, that toward the close of the season of suckling, the female seals may actually begin to spend a considerable portion of their time at sea in search of food. It is unlikely that this occurs to any notable

extent till after the middle of September, before which the season of pelagic sealing in Behring Sea practically closes.

Now, Sir, I leave this subject, although there is more to be said about it. The bearing of it upon the question of zone you well see is important because if it be true that they do not leave the islands for food until that late period when they have accomplished their work in not only giving birth to, but of suckling, their young for a considerable time, of course it justifies the claim for a narrower area and shews the non-necessity for a wider area of restriction. I have not lost sight of the fact, and I do not lose sight of the fact, that there are instances given of females with milk killed at very long distances from the islands—I have not lost sight of that fact at all; but when it is borne in mind first of all, that the percentage of death of pups from natural causes is so enormous, and that these natural enemies of theirs—the Killer Whales—attack them when they can get at them in the water, is not it a fair presumption, in the absence of evidence to the contrary, to say that the seals so found at remote distances, are either seals that have accomplished their work of nursing their young—that are going off milk so to say—or that they are the seals that have lost their pups from natural causes; for I do ask the Tribunal here (without dwelling on the evidence which must be examined more in detail), to note this: That while these instances are mentioned here and there in the evidence on the part of the United States, I cannot recall any case where there is a combination of three essential things in order to enable the Tribunal to judge of the weight of that particular evidence. What I mean is this—a combination of statement as to *time*, of *place*, and of *number*. I find isolated instances of killing at a great distance, without statement as to *date;* of date, without statement as to *place*, and in both instances no enumeration of *numbers*, so that they would probably be, not infrequently what might properly be characterised as "exceptional cases."

The PRESIDENT.—Is it not a general rule of Natural history, that all animals that shed their hair or lose their feathers, like birds for instance, abstain from food and go through a certain process of disease or illness, at least, during that period of changing their hair or losing their feather?

Sir CHARLES RUSSELL.—I have not a sufficiently large acquaintance with Natural history to answer the question in a reliable way—in a way that would assist your view, Sir. In the case of birds of a domestic kind, I have never known of their *abstaining* from food. They no doubt go through a period of indifferent health, and they may abstain, to some extent, from food; but I am not aware that they entirely abstain. There are of course such cases as the case of Deer who abstain, during the rutting season, from food to any appreciable extent, and cases of that kind.

Now, Sir, I have said all I have to say upon that, except one other observation. You will recollect the Correspondence relating to an interview between Lord Salisbury and Mr. Phelps as to which there appears to be some difference of recollection between those two gentlemen upon the question of a "close time"—This correspondence—(I am not going to deal with it now) took place in February 1888, and April 1888, and is referred to in December of 1888, where a close time from April to September, was proposed by Mr. Phelps with a conditional or provisional assent by Lord Salisbury. Now I could not have a more notable instance than this, of the amazing ignorance that prevailed on the question of the habits and conditions of seal life, because of course, the suggestion of a "close time",—(and I ask attention to be paid to this)—to Lord Salisbury who knew at that time as much about seals

as I did six months ago, which was nothing, implies of course that there is a *legitimate* season. A "close time" means a time when you are *forbidden*, and implies a time when you are *permitted*. And this, of course, had relation to Behring Sea, and to Behring Sea only. But I need not say that I do not charge Mr. Phelps with bad faith in the matter—I merely charge him, and those who instruct him, with entire ignorance in the matter, because the proposition of a close time from April to September in Behring Sea would have meant to say in other words, *no pelagic sealing* in Behring Sea; and I need not say that Mr. Phelps would have been no party, if he had known it, to the fact of putting forward a suggestion of a close time (which would have meant the prohibition of pelagic sealing), without conveying to Lord Salisbury if he knew it—I am sure he did not know it—that that meant no permissible season at all.

Now I leave the question of zone. I have made the suggestion and I have given the reasons why I think a zone of a character which the British Commissioners have suggested looking to the fact that a prohibition of twenty miles from the shore means a prohibition of nearer 40 miles if not actually 40, would practically leave, during the breeding season inside Behring Sea, an ample protection for the great mass of the fur-seals, and the practical protection of all who were engaged in the actual business of breeding and nursing while they are there.

Senator MORGAN.—Do you offer that in connection with your proposition for a licensing system, or independently?

Sir CHARLES RUSSELL.—I mean the licensing system in connection with it, so far as regards Behring Sea, with one other important point: The British Commissioners authorize the suggestion (and I submit it is one which shows their perfect and entire good faith in the matter), that there should be an absolute prohibition against any pelagic sealing vessel entering Behring Sea before the 1st of July. That is in addition to the zone which I am speaking of. The zone is a *perpetual* zone, you understand—a regulation forbidding the entrance into Behring Sea of any vessel before the 1st of July.

Senator MORGAN.—July or June?

Sir CHARLES RUSSELL.—July, before the 1st of July; and I shall show reasons why we justify that.

Lord HANNEN.—Do you mean justify it in the sense of proposing it yourself as the proper time.

Sir CHARLES RUSSELL.—Why we justify it as one which would be effective for the object in view contemplated by the Treaty, and one which would be just. But before I come to that I have, of course, a word to say. We admit your perfect right, within your undoubted jurisdiction, to say, as regards Behring Sea, no vessel shall enter before the 1st of July. That is within your undoubted authority and jurisdiction. *Outside* Behring Sea we have already submitted—(I am not going to re-open the question) for your consideration and determination, whether your authority extends beyond it? If your authority extends beyond it, and you feel justified in exercising that authority, then of course I have to consider what ought to be the regulation outside Behring Sea. And now in that connection, without dwelling upon the 1st of July, I will approach the question from the other point of view, namely, from the point of view of earlier in the season.

Senator MORGAN.—The question whether our authority does extend outside Behring Sea, is one for the determination of the Tribunal.

Sir CHARLES RUSSELL.—I cannot doubt that you must determine what is open to the Tribunal on the question of authority, and if you

come to the conclusion that you have authority and you ought to exercise it, then you, of course, have the right to exercise it.

Now, Sir, you will bear in mind, or if you have not it in mind you will receive it from me for the moment—that the British Commissioners have stated that the worst part of the pelagic operation so far as effecting the birth rate of the fur-seal species, is what is described as the "early spring catch", and the evidence corroborates their opinion—I will not dwell upon it now; that is to say, the catch beginning far down south, and made during the migration northward to the breeding islands: that those catches begin in the months of January and February, and go on through March, April, May, June and so on, following the herd, so to speak, in its migration northward; and the British Commissioners point out with clearness that that is the portion of the catch in which gravid females are killed, and they pronounce that to be the kind of killing which it is desirable should be put a stop to. There is no such thing I think practically speaking, as the killing of gravid females in Behring Sea—it is the killing of gravid females on the migration of the herd northward.

Senator MORGAN.—Is there any disagreement between the parties here as to the blue line on the map being substantially the route of travel?

Sir CHARLES RUSSELL.—There is; but I must ask my friend as far as he thinks it necessary, to deal with that. I do not myself conceive that the differences may be important—I do not conceive it to be very important.

The problem, therefore, is this, as we submit it: how can you make a Regulation which will ensure that the gravid females, and the bulk of the herd connected with the procreation and continuation of the species shall have reached the Pribilof Islands free from the attack of the pelagic sealer? Now I think I am stating the proposition fairly: the British Commissioners suggest that an effective mode would be to prevent them sailing from any one of these lincensing ports before the first of May. Whether that date is late enough or whether the Tribunal may think that that date is late enough I do not know; but they justify it by saying this. They say: by that time there is far ahead of the pelagic sealer the great mass of the gravid females; and that does seem to be borne out to a considerable extent by another Chart of the United States which is called the "Migration Chart", which is n° 7 in the Counter Case, to which I should like now to draw the attention of the Tribunal. This, Sir, I think I must ask you to have before you. You will see in the centre of the map, the months "November", "December", "January".

I do not think you need really be troubled with those, they are very unimportant months. The weather is such in those months that pelagic sealing, practically, can hardly be said to be pursued at all; but now when you come to the other months, you will see for instance, the months of "February", "March" "April", I wish to indicate that the *black* dots are intended to represent the *females*, including the gravid females; and the *red* dots are intended to represent the *males*. Now you will see that during the month of February there is an admixture, the males preponderating; that during the month of March, again there is an admixture; but that as you progress in the month of March the female seals of the gravid herd get ahead of the rest on their way up to the Islands. You may see that, Sir, just under the word "March". Again, if you follow the stream right up, by the month of April you will see as you follow that line in its bend round, that the females get

ahead again there. So in the month of May; so in the month of June; so in the month of July. You will observe that in the months of June and July the whole of the tail of the herd is male, and that the greater number of females are all to the front. Now take that fact finally followed out, and you will see that when you get to the north of the Aleutian chain you have nothing but *black* dots. There the bulls have got to the islands before, and they are not shewn by this plan. You have nothing but *black* dots there—in other words a continuous stream of gravid females on their way to the islands. Now the evidence is—(I cannot stop to refer to it)—that by the middle of June the great bulk of the gravid females have got to the Pribilof Islands: that by the 20th of June practically all have got to the Pribilof Islands and therefore practically all—when I say practically all I do not mean that there may not be some remaining—but practically all have got to the islands by the 20th of June; and therefore the proposition is to regulate the date of sailing from these licensing ports so that the great bulk of the herd shall have got away, and into the Behring Sea on their way to the Pribilof Islands before they could be taken or overtaken by pelagic sealers setting out from San Francisco, Vancouver, Port Townsend, or Victoria.

Lord HANNEN.—Upon that assumption we are to prevent their entering Behring Sea before the first of July?

Sir CHARLES RUSSELL.—I quite agree, because the Commissioners, apparently, desire to be on the safe side in order to allow the work of parturition—the business of producing the young—to have been accomplished before there could be capture.

Lord HANNEN.—A zone round the islands would protect that.

Sir CHARLES RUSSELL.—That is undoubtedly my opinion if I were to be asked it. I am putting it on the authority of those who.—

Lord HANNEN.—That is why I asked you, when you said you justified it, whether you meant yourself to put forward the 1st of July as the proper time?

Sir CHARLES RUSSELL.—Undoubtedly I do not gainsay the suggestion of the Commissioners; for as they think proper to make it, I do not in any way oppose it. It does seem to me an unnecessarily wide restriction; but as they have made the suggestion we feel bound to act upon it, and put it before the Tribunal.

Now, as bearing on this matter, it is important to call attention to distances. We have taken the distances, in order that the Tribunal may have them in their minds, from these various ports to one point, Unimak Pass, which is the principal pass. From San Francisco the Unimak Pass is 2,080 miles. From Victoria to Unimak Pass is 1,560 miles.

Senator MORGAN.—In a direct line?

Sir CHARLES RUSSELL.—In a direct line. These are all direct lines. From Port Townsend to Unimak Pass is 1,560 miles, the same as Victoria; and Vancouver is practically the same. There is very little difference.

The PRESIDENT.—Could you state the time required for a sailing boat to go from those places to Unimak Pass?

Sir CHARLES RUSSELL.—That, of course, is a matter which depends on various circumstances.

Lord HANNEN.—Why restrict them then as to the time of sailing? Why not say they shall not begin to fish before such and such a time?

Sir CHARLES RUSSELL.—The only reason is the difficulty of checking.

Lord HANNEN.—Other means might be taken for checking.

Sir CHARLES RUSSELL. I quite agree that the licensing system would act as a check.

Lord HANNEN.—They could be required to keep a log, stating when they begin to fish, and where they catch the seals, how many they catch, and so on.

Sir CHARLES RUSSELL.—I am coming to that in a moment.

Lord HANNEN.—The other way, it seems to me, is a very artificial way, of regulating the matter, saying they shall not start until a particular day. It is giving the advantage to particular sealers, and so on.

Senator MORGAN.—I would suggest to Lord Hannen that this is what is done in the case of the hair seal on the northeastern coast, by the laws of Newfoundland.

Sir CHARLES RUSSELL.—The last suggestion that I have to make in this connection—because this will be worked out more elaborately by reference to the evidence—is that each of these licensed vessels should be required as a condition to their having a license to preserve an accurate record of their catch, and time, place, age, and sex, and certainly similar regulations ought to be observed upon the islands.

Now I have said really all that I intend to say in the way of our suggestions, which I confess seem to me to be—I perhaps ought not to express my own opinion—to have been suggestions conceived in a broad and liberal spirit by the British Commissioners, and a very large recognition and a very honest recognition of what they conceive to be the object of this treaty.

Mr. Justice HARLAN.—Are they reduced to writing separately?

Sir CHARLES RUSSELL.—No; we will put them in a more definite form later.

Now, Mr. President, I have very little more to say on the question of regulations except this: Senator Morgan I think already has intimated the opinion in which we, representing the British Government, entirely agree. The suggestion of the United States is that you should, in your regulations, not merely lay down rules, but also lay down sanctions and remedies and proceedings and methods for carrying out those rules, for enforcing them. I cannot conceive that that is the function of this Tribunal at all. It cannot be doubted that when this Tribunal has discharged its functions of intimating the rules which, within its authority, it thinks to be necessary for the object contemplated in the treaty, that both the United States and Great Britain will be ready to give effect by adequate measure to the enforcement of those rules on their repective nationals.

Senator MORGAN.—I have been misunderstood, if I was understood to express the opinion that this Tribunal should enforce its regulations by prescribing penalties.

Sir CHARLES RUSSELL.—I quite agree. I am anticipating that view. That was not the course which was followed and which exists—one of the Tribunal, I have no doubt, has acquaintance with the working of it,—in the case of the Janmayen. Each of the powers interested in the observance of that Janmayen Convention has made its own legislation directly in restraint of its own nationals, and of course claiming the right to deal with its own ships and in its own court of judicature. The notion of an American ship being taken into a British port and there dealt with, or a British ship, being taken into an American port, is of course entirely repugnant to the national feeling which would prevail either in one country or the other.

The PRESIDENT.—You would also exclude the right of searching?

Sir CHARLES RUSSELL.—Certainly. I have dealt with that point already. Lastly, I have to make one reference. My learned friend

Mr. Phelps in his printed argument make this statement at page 169. It is in reference to what he supposes to have been the action of Russia. He says:

The firm and resolute recent action of the Russian Government in prohibiting in the open sea, near the Commander Islands, the same depredations upon the seal herd that are complained of by the United States in the present case, and in capturing the Canadian vessels engaged in it, is well known and will be universally approved. That Great Britain, strong and fearless to defend her rights in every quarter of the globe, will send a fleet into those waters to mount guard over the extermination of the Russian seals by the slaughter of pregnant and nursing females, is not to be reasonably expected. The world will see no war between Great Britain and Russia on that score.

No indeed, it will not; because Russia is wise, and is wisely advised and understands what the limitations of its rights in fact are. Now I wish to make this point clear, as my learned friend has invited attention to it. We know that the Russian Government is—or more correctly we ought to put it that the United States Government has been in communication with Russia, and has been endeavouring to get Russia to make common cause with it upon this question. I refer, Sir, for this purpose to the dispatch set out in the largest volume of all, volume three, United States No. 3, 1892, part 4, page 21. It is only a sentence and I need hardly trouble you to do more than take the reference to it. It is from Sir Robert Morier to the Marquis of Salisbury, June 10, 1891, from St. Petersburg:

When your Lordship's telegram of the 2nd instant respecting the seal question in the Bering's Sea reached St. Petersburg on Wednesday morning, I chanced to be in Finland, whither I had gone for an indispensable change of air. M. de Giers also intended to proceed thither at the end of the week. The places where we were staying were a considerable distance apart, and I was not sure which day M. de Giers was leaving St. Petersburg. I did not know whether to go to the capital or to his country-house. I accordingly telegraphed to Mr. Howard to at once address a note to the Foreign Office in the sense of Your Lordship's telegram, and arrange to meet M. de Giers at his country-house on Sunday. By this means no time was lost, for as early as Thursday night M. Chichkine, the Under Secretary of Foreign Affairs, had telegraphed the contents of Mr. Howard's note to M. de Giers, who when I reached him on Sunday, had had the papers connected with the subject sent up to him and was in a position to give a provisional reply.

His Excellency's statement was to the following effect.

The question of seal hunting in the Behring's Sea had formed the subject of continuous negociation between the United States Government and his own for a very considerable time, and many proposals had been submitted to him by the United States Department, to none of which, however, had he been able to give his assent. So far as he could see, your Lordship's proposal was very reasonable, and its principle—namely, to give the seal fisheries a year's rest in order to come to a definite arrangement as to the best means for preventing the destruction of these valuable animals—was one with which he had the fullest sympathy.

I do not think there is anything else in that that I need read. My point is to show that Russia was made aware of the pretentions which the United States was advancing, and declined, as is there stated, to join in those pretentions; but we are now in a position to put before you reliably what is the attitude of the Russian Government. That appears in a Parliamentary paper, with which I am not going to trouble the Tribunal, but the effect of which I will shortly state.

Mr. CARTER.—What is about to be read now?

Sir CHARLES RUSSELL.—A Parliamentary paper, Russia No. 1, 1893.

Mr. CARTER.—Where is that to be found?

Sir CHARLES RUSSELL.—It is not to be found in the books. It cannot be, because it is a paper which was written in 1893.

Mr. CARTER.—Do you propose to put it in evidence?

Sir CHARLES RUSSELL.—I am proposing to meet a statement which Mr. Phelps has made in his printed argument, which bears with it a

certain implication, and to meet that by evidence of historical documents, to show that implication is not correct.

Mr. CARTER.—In other words, you propose to put it in evidence.

Sir CHARLES RUSSELL.—Certainly.

The PRESIDENT.—Mr. Phelps, do you object to that?

Mr. PHELPS.—We do not care to object to this paper, Sir. The whole of it of course goes in, so that we will have the opportunity to refer to it.

Sir CHARLES RUSSELL.—I have not the slightest doubt that my learned friend is in possession of all these papers. I hope he is.

Mr. PHELPS.—Of course we are not to be understood as waiving the ground upon which we have stood all along, that new evidence is not admissible at this time; but we do not care to raise the objection to this paper.

Sir CHARLES RUSSELL.—This must be unarguable. It is not new evidence, I submit with great deference. It is in reference to a statement of my learned friend from which he wishes the Tribunal to draw a certain inference, which is in fact incorrect, but which we had no opportunity of meeting because it appears in the argument.

Mr. CARTER.—It certainly is new evidence; but we do not care to raise any objection on that score. We do not agree that new evidence is generally admissible.

Sir CHARLES RUSSELL.—I first of all call attention to this fact (I am not going to read it in detail; my learned friend will do so) that when in 1893 the seizures by Russia had taken place, we called upon the representative of the Russian Government for an explanation in the letter of the 25th of January, 1893, from Sir Robert Morier to Lord Rosebery, page 5 of the correspondence:

> His Excellency stated incidentally that he believed that in the case of the sealers captured last season it would be found that none of them had been taken illegally, for if they had been seized outside of the territorial waters, it was after the clearest proof that they had just emerged therefrom.

In other words, they say: None of our seizures were against the rules of international law as to territory, because they were either within the three miles limit or had just emerged from it, having committed an offence within it.

Finally this correspondence takes the shape of negociation between Russia and Great Britain for a *Modus vivendi;* and that *Modus vivendi* stated shortly thus: It is now finally agreed that the zone from the Russian coast shall be 10 miles and around the Russian seal islands 30 miles; this agreement be it understood being entirely provisional, each party standing upon its own rights and in no wise affected in its possession by this provisional or temporary agreement.

Mr. Justice HARLAN.—How long was the *Modus* to last?

Sir CHARLES RUSSELL.—One year. Each Government standing upon its own rights and the Russian Government perfectly aware of the position assumed by the United States, reserving its right to say that it might extend its territorial jurisdiction for the purpose of putting sealing down, etc... those contentions, of course, being traversed on the part of Great Britain, but each party standing on its rights. But the value of the correspondence is this: That there is an entire absence of that which has been the great—up to a certain point—argument of my learned friends of a claim to property in the seal collectively or individually, or in respect to the industry founded upon the seal, or that pelagic sealing was an invasion of that right or industry. Next that they have recognized that in the circumstances of the case a zone of

thirty miles around the islands, or being under the impression also that breeding females do go to feed and urging, as you will see from the correspondence, when it is read, that even a smaller zone may be adequate to the purpose, yet that thirty miles would be adequate to cover the extent to which females would go during the nursing season for the purpose of feeding.

And lastly this is the concluding point to which I have to call the attention of the Tribunal that in the case of the seizures I give you the names of the vessels, the *Marie*, the *Rosie Olson*, and the *Vancouver*. Russia claims that those were lawfully captured because they had committed an offence within the territory of Russia, within the three miles limit, some there captured, or if not there captured, pursued, having offended, within the three miles limit.

But as regards two other vessels, the *McGowan* and the *Ariel*, they have undertaken to pay damages in respect to the seizure of those vessels, because while they allege that they believe it to have been morally certain that they had been sealing within the three mile limit, they have not sufficient evidence to justify it, and therefore they are paying damages in respect to the seizure of those two vessels.

Mr. PHELPS.—Is that in the correspondence, Sir Charles?

Sir CHARLES RUSSELL.—It is not in the correspondence.

Mr. CARTER.—Where is it?

Sir CHARLES RUSSELL.—It is in a telegraphic communication received from St. Petersburgh, a copy of which will be handed to you.

Mr. CARTER.—And which we object to the reception of.

Mr. PHELPS.—Of course. We have no means of refuting it.

Sir CHARLES RUSSELL.—Why do you, if you are not prepared for the consequences, make a statement in which you seek to imply before this Tribunal that Russia is making assertions which Russia is not in fact making?

Mr. CARTER.—We make that upon evidence.

Sir CHARLES RUSSELL.—Where is the evidence? There is not a particle of evidence to justify it. On the contrary I have pointed out the statement appearing in the argument of my friend Mr. Phelps, and it is not supported by any evidence to be found in the Case or Counter Case.

Mr. CARTER.—Then you do not require any new evidence to refute it.

Sir CHARLES RUSSELL.—I do not stop to bandy words at this moment with my friend.

I had forgotten to mention,—my friend Mr. Robinson very properly reminds me—that one of the stipulations that Russia did not consider unworthy of its dignity was to reduce the number of seals taken on these seal islands to thirty thousand. That appears in the correspondence; and also they agree to the presence of an agent of Great Britain on the islands with reference to this *modus vivendi*.

Mr. PHELPS.—Perhaps my friend will allow me to ask his attention to the debate in the House of Lords on one of the days of last week, reported in the London *Times*, in which Lord Rosebery made a statement in regard to this, which to my recollection contains nothing about damages.

Sir CHARLES RUSSELL.—No; you are perfectly right; it does not. But I am stating upon direct information from the Foreign Office what is the actual state of things to-day. I have no objection to my friend referring to the debate at all—not the least.

There was only one other matter I have to mention. It has nothing to do with the regulations. You recollect the question of the find-

ings of fact and counter findings suggested respectively by my learned friends and by ourselves. I am glad to think that you will not be troubled so far as any disagreement is concerned. Of course the findings will be on the responsibility of the Tribunal; but we have in fact agreed, and I do not think the Tribunal will find there is any difference between us as to the findings of fact in relation to the question of damages.

Mr. Justice HARLAN.—Do you mean that the two papers agree, or that you have since come to an agreement?

Sir CHARLES RUSSELL.—We have agreed upon a *via media* which will be handed in at a later stage.

Now, Mr. President, I have concluded all I have to say in discharge of my duty on this question of regulations; but I do pray the Tribunal to bear in mind that I have tried to follow the plan which I outlined at the commencement of my argument, and I have not built up and reinforced the points I have been submitting with at all that detail or reference to evidence which I might have done. I have tried to outline, with the consent and co-operation of my friends, the general scheme of argument upon the subject of regulations. Having done that, I leave to my learned friends the task which they are well fitted to discharge of going into the justification of that scheme in detail.

I will ask the Tribunal to believe that not the British Commissioners only but the counsel who are representing directly Great Britain in this matter have approached the question of regulations with an honest desire to do something to aid the Tribunal in coming to a system of regulations which should be just in themselves, in view of the common interests at stake, and which should be effective to the object in view. We have addressed ourselves to that task in all seriousness, and I would ask you to believe, in all honesty of purpose, too; and I hope the Tribunal will think we have done something which may be of help to them in the formidable task which they have to discharge.

It remains for me only to express to each member of this Tribunal my sense of the extreme courtesy and patience with which, taxing them to a very large extent, I have been treated during this argument.

The PRESIDENT.—Sir Charles, we appreciate your kindness and your efforts in this direction. We are certainly thankful for all the trouble you have taken.

[The Tribunal here adjourned for a short time.]

FUR-SEAL ARBITRATION.

ORAL ARGUMENT

ON

REGULATIONS

BY

SIR RICHARD WEBSTER, Q. C., M. P.,

BEFORE THE

TRIBUNAL OF ARBITRATION,

CONVENED AT PARIS.

THIRTY-SEVENTH DAY, JUNE 13TH, 1893.

The PRESIDENT.—Sir Richard, we shall be pleased, if you are ready, to hear you.

Sir RICHARD WEBSTER.—Mr. President, I am painfully conscious of the time that our case has occupied, and of the extent to which we have trespassed upon the attention of this Tribunal, but I trust that upon this part of the case I shall be able to give the Arbitrators some substantial assistance at any rate in forming a judgment as to the true facts of the case. It is quite impossible to attempt to touch every point that is referred to in these papers; so to attempt would be to defeat, to a large extent, one's object. I do not pretend that this part of the case can be put in the same way, as the arguments on the question of right. These are questions of fact upon which there is counter evidence upon both sides. It will be my duty as fairly as I can, to put before you the material evidence bearing upon the questions of fact which ought, we submit, to affect your minds in deciding this question of Regulations. I will endeavour to exhaust each point as I pass it by so as to curtail within the shortest possible limits, the time that I must ask you to be good enough to devote in listening to my observations. It will be convenient if I dispose once and for all of this Russian question. It has a bearing upon Regulations, it has an indirect bearing upon the question of property which I discussed some days ago. If I take it at once as I said, once and for all, I shall clear it away from the minds of the Tribunal and be able to refer to the incident afterwards without actually referring to the papers. You will remember, Sir that in the counter case of the United States at page 29 the United States say:

> In making this assertion the United States believe they are fully sustained by Russia's action during the summer of 1892. In that year sealing vessels assembled in great numbers about the Commander Islands and killed fur-seals in the extra territorial waters surrounding this group. Russia anticipating that her seal herd would be thus preyed upon, had dispatched to those waters in the early part of the season two cruisers, which seized six vessels, five of them British and one of them American, carrying them in from a distance greater than three miles from any land.

Now, Mr. President, I ought to mention that Mr. Coudert, or Mr. Carter in his argument referred to the Russian action, as indicating an intention by Russia, to make the same kind of claims as those which were made by the United States. We were therefore in a somewhat difficult position—that whatever our own knowledge might be with regard to the matter we were not in a position to state it because as you will well know as long as matters form part merely of diplomatic negociations, is it not considered that they should be brought in any way into the arena of public discussion; but by the paper of which my friends have a copy—the Parliamentary paper which was presented to the House of Commons and House of Lords last week—that restriction upon our utterances is removed and I am in a position, as the Attorney General told you, to put before you the simple facts with reference to the matter in the briefest possible way.

Mr. President, two questions were involved—one the seizure of five or six British vessels in the year 1892, the other a question of Regula-

tions, and it is because this paper deals with both that I have taken it first. As you will see in a very few minutes, it has a very important bearing on the question of Regulations, but I mention the two subjects together so that I need not mention them again. My learned friend, Mr. Phelps mentioned today that in the debate in the House of Lords last week when part of the arrangement respecting Regulations was referred to, Lord Rosebery, the Foreign Minister for Great Britain had not stated that there was any definite arrangement with regard to the seizures of last year, but as had been previously stated in the House of Commons by the Under Secretary, the matter was still in negotiation; and, Mr. President, it was not till to day that the Attorney General or myself could have told the Tribunal that which the Attorney General has told you. We knew perfectly well what was happening, but were not in a position to state it for the reasons I have already mentioned. The matter had been referred by the Russian Government as appears by the papers to a Committee on which a very distinguished jurist is sitting—Mr. Martens one of the gentlemen whose authority we have cited in the course of the case, and till that Committee reported, the question of the seizures during the last year could not be dealt with.

Now with regard to the seizures, I will dispose of them in a moment. Russia never did claim at any time to seize these vessels outside the territorial waters except where there was evidence that they had been inside. That will appear from the correspondence which I will read in a moment. I merely mention that in the final arrangement, made as read to you this morning by the Attorney General the only case in which they seek or ask to justify the capture is where the boats of the ship herself had been actually engaged in sealing in territorial waters. In the other case they admit a responsibility and liability to indemnify.

This paper from which I am about to read which is now before my learned friends and before you, would have told you the same story, but not quite so shortly as the telegram or information from the Foreign Office that the Attorney General read to you this morning. I will read no more than is necessary and if I might trouble you to take the paper and to look at p. 3.

In the despatch from Lord Rosebery to Sir Robert Morier on the 18th January, 1893, occurs this passage.

> But the seizures of British vessels by the Russian authorities in Behring Sea during the course of last year, at considerable distances from land, render it expedient to arrive at some definite understanding of the attitude of the Russian Government in this respect.
>
> I have, therefore, to request that your Excellency will inform the Russian Government of the application that has been made by the Canadian sealers.
>
> You will state that in the opinion of Her Majesty's Government, which they doubt not will be shared by that of Russia, the memorialists ought in justice to receive early information as to the limits within which they may lawfully and safely pursue their industry.

And then, Sir, on page 4, on the 11th of January, Sir Robert Morier, writing to Mr. Chichkine the representative of Russia, puts the matter in these words:

> As at present advised Her Majesty's Government propose to inform them

That is the sealers:

> that the *modus vivendi* agreed upon between Great Britain and the United States having been prolonged during the pendency of the arbitration on the questions in dispute between these two Powers, sealing will be entirely prohibited to their respective subjects and citizens during the next season in the waters affected by that agreement; but that outside those waters sealing vessels will be at liberty to pursue their

avocation provided they are careful not to infringe the Russian regulations, which strictly prohibit the pursuit of seals and other animals within 3 miles of the Russian coasts and islands.

Then on the 25th of January at page 5, Sir Robert Morier reports to Lord Rosebery the result of his interview with Mr. Chichkine, and I will read as much as is necessary from that paper:

His Excellency said that he would not be able to do so until my note had been returned from the Ministry of Domains, which was the Department which dealt with the question of sealing, and to which it had been sent. He would press its return, but there could be no doubt what the answer would be. The Russian Government were not at present raising the pretension of prohibiting seal fishing on the high seas, but were only determined to stop the resolute and organized attacks made upon the rookeries within her territorial waters. I said that the strongest warning would be given to British sealers to abstain from violating Russian territorial waters, and that Her Majesty's cruizers would be instructed accordingly.

His Excellency stated, incidentally, that he believed that in the case of the sealers captured last season, it would be found that none of them had been taken illegally, for if they had been seized outside territorial waters, it was after the clearest proof that they had just emerged from them. I said this was a matter of evidence in each particular case, which I could not attempt to judge; but that from the statements made by the Russian cruizers themselves, it was difficult to admit that the captures were lawful.

I call the attention of the members of the Tribunal particularly to the report of the interview given by Sir Robert Morier, in which the Russian representative draws the distinction between a legal taking inside territorial waters, and an illegal taking outside.

Now you may pass over the intermediate correspondence and come to page 11 to the translation of the letter from M. Chichkine to Sir Robert Morier which you will find will have a very important bearing when I come to discuss the question of Regulations and I read it now so as not to have to refer to the correspondence again. This is the second paragraph:

While thanking you M. l'Ambassadeur, for this action, of which the Imperial Government takes note, I hasten to inform you that the question of the measures to be adopted to prevent the destruction of the seal species has been under consideration for some time past, and that I have been obliged to wait the preliminary results of this investigation before replying to the note which you were so good as to address to me. In approaching, on the present occasion, the question of the seal fisheries, I must first of all point out to your Excellency that the insufficiency of the strict application to this matter of the general rules of international law respecting territorial waters has been proved by the mere fact that negociations were commenced in 1887 between the three Powers principally concerned with the object of agreeing upon special and exceptional measures.

I am desirous to avoid lengthening the matter by unnecessary comment, but I must be allowed to point out that which will appear over and over again in this correspondence that the attitude of Russia has been consistent throughout, namely, claiming a right to exercise these powers within the territorial limit subject to the agreement outside and a reference to the fact that the general rules of international law are not sufficient for the purpose required.

Now turning to page 12 the letter continues.

The following figures clearly show this:

The number of seals to be killed annually is fixed by the Administration in proportion to the total number of seals. In the years 1889 and 1890, before the establishment of the Anglo-American *modus vivendi*, the catch amounted to 55,915 and 56,833, while for the years 1891 and 1892 (after the above-mentioned agreement) the figures fell to 30,689 and 31,315. On the other hand according to the statistical information which the Imperial Government has been able to obtain, the quantity of seal skins of Russian origin delivered by the sealers to the London market increased during those two years in an infinitely greater proportion. According to the observations made by the local Administration the number of vessels engaged in sealing and seen in the neighbourhood of the Commander Islands and Inelen (Robben) Island has also increased considerably,

You will find that means seen from the Islands.

The barbarous and illicit proceedings of these sealers are also proved by the fact, established by seizures, that more than 90 per cent, of the seal skins carried away by them are those of female seals, who are hardly, if ever, found far from the shore during the sealing season, and whose destruction entails that of all the young which they are suckling.

The destructive character of the fishery is also shown by the number of seals wounded or abandoned on the shore or within territorial waters, and afterwards found by the local authorities.

Language could not be stronger, Mr. President, to point that which I desire to bring prominently to the mind of the Tribunal after the fullest investigation and postponing this matter till there had been complete investigation, the considered opinion of the Russian authorities, who had managed the Commander and Robben Islands at any rate not worse than the United States authorities have managed the Prybilof Islands is that the female seals are hardly if ever found far from the shore during the sealing season, and further they were complaining of the seals injured in territorial waters, and they gave as evidence the fact that numbers of them have been found on the shore actually abandoned within the territorial waters.—Then:

The Imperial Government on their side do not hesitate to recognize the fact that protection cannot be carried out in a really satisfactory manner unless it is preceded by some such agreement.

I need not point out that this is absolutely inconsistent with any suggestion that Russia themselves meant to take the law into their own hands.

Accordingly they are disposed to enter into negociations at once with the Governments of Great Britain, and of the United States of America; but they recognise at the same time the absolute necessity of immediate provisional measures, both on account of the near approach of the sealing season and in order to be in a position to reply in good time to the question contained in your Excellency's note of the 11th (23rd) January.

With this object, and after thorough investigation, the Imperial Government has thought it necessary to decide on the following measures to be in force during the year 1893:

I. No Ship unprovided with a special authorization shall be permitted to hunt for seals within a distance of 10 miles along all the coast belonging to Russia. 2. This prohibited zone shall be 30 miles wide around the Commander Islands and Inlenew (Robben) Island according to the Russian official maps, which implies that the passage between the Commander Islands will be closed to vessels engaged in sealing.

With regard to the 10 mile zone along the coast, these measures will be justified by the fact that vessels engaged in the seal fishery generally take up positions at a distance of from 7 to 9 miles from the coast, while their boats and crews engage, in sealing both on the coast itself and in territorial waters. As soon as a cruizer is sighted the ships take to the open sea and try to recall their boats from territorial waters with regard to the 30-mile zone round the islands, this measure is taken with a view to protect the banks, known by the sealers as "sealing grounds" which extend round the islands, and are not shown with sufficient accuracy on maps. These banks are frequented during certain seasons by the female seals, tho killing of which is particularly destructive to the seal species at the time of the year when the females are suckling their young, or go to seek food on the banks known as "sealing grounds". While requesting you Mr. l'Ambassadeur, to bring the foregoing considerations to the knowledge of Her Majesty's Government, I think it important to insist on the essentially provisional character of the above measures adopted under pressure of exceptional circumstances which may be regarded as a case of *force majeure* and analogous to cases of legitimate self-defence.

It does not, of course, enter at all into the intention of the Imperial Government to dispute the generally recognized rules with respect to territorial waters. In their opinion, far from attacking these general principles of international law, the measures which they think necessary to take must be regarded as confirming them, as the exception proves the rule.

Then occurs a statement which I need not read—I am willing to if my learned friends wish it—but it is a repetition of the reason why they

ask for 10 miles because of the vessels stopping outside and the boats themselves going in.

Then you will find, on page 14, Lord Rosebery's reply, agreeing in this proposal; I need not read much, but, at the beginning of the letter, Lord Rosebery calls marked attention to Mr. Chichkine's statement:

Her Majesty's Government have given their most careful consideration to the note of Mr. Chichkine of the 12th (24th) ultimo, inclosed in your Excellency's despatch of the following day, and stating the measures which the Russian Government deem necessary for the protection of their sealing interests in the North Pacific during the approaching fishery season, and which are submitted to Her Majesty's Government for consideration with a view to their acceptance.

Those measures consist in:

(1) The prohibition of sealing to vessels not specially authorised within a zone of 10 miles from the Russian coast.

(2) The extension of this prohibitive zone to a distance of 30 miles round Robben Island and the Commander Islands.

For the purpose of securing the due observance of these restrictions, it is proposed that the Russian cruisers should be authorised to pursue and seize all vessels whose boats or crews have been found fishing for seals within the prohibited limits, and further to pursue and search any vessels whose boats have been seen within those limits whether actually employed in seal hunting or not. In the latter case the presence on board of instruments specially employed in seal hunting or of seal-skins, the majority of which are those of females, is to be held to afford sufficient presumptive evidence to justify seizure.

Her Majesty's Government take note of the statements made in M. Chichkine's note that the Russian Government have no intention of disputing the generally recognized rules of international law as to territorial waters, that these measures, of an exceptional and provisional nature, are designed to meet a pressing emergency, and that Russia is desirous of entering at once upon discussions with the Governments of Great Britain and the United States with a view to an agreement between the Powers principally interested for the proper control of the sealing industry.

Then, at page 15, Lord Rosebery undertakes, on behalf of the Government, to issue the necessary instructions, and refers to the privilege of British vessels resorting to Russian ports for shelter repairs and supplies; and expresses, as would be expected, the willingness of Her Majesty's Government to agree in any reasonable arrangement for the proper protection of seal life. Then:

If these proposals should, as I hope, be agreeable to the Russian Government, I should be glad to learn at the earliest moment their views as to the limitation which they would agree to place on the number of seals to be killed on the islands. The Reports of the British Commissioners as to the care that, as a rule, has heretofore been taken to prevent any excess in this respect on the Komandorski Islands, lead me to believe that there would be no difficulty in arriving at an agreement on this point.

My learned friend, Mr. Robinson, reminded me, and I am very much obliged to him, because it is important to note, as I shall presently, that the Russian Government, as a consideration for Great Britain restraining the legitimate rights of their sealers, offered to reduce or limit the number of seals to be killed. It appears also in fact on page 15, a little higher up than that; and these are Lord Rosebery's words:

The Russian Government would further engage that the number of seals to be killed on the Russian seal islands should be limited to a certain specified number to be agreed upon before hand, or to a certain proportion, to be equally agreed upon, of the total number of seals estimated to have resorted to the islands in the season.

The Russian Government would further allow an Agent of the British Government to land upon the islands for the purpose of consulting with the Russian authorities on the working and observed results of the arrangement.

Therefore, you will observe that the proposition coming from Russia was that, by agreement, there should be a zone of 30 miles and a zone of 10 miles in order to protect the sealing Islands, an infringement of the ordinary territorial waters; and that, in consideration of those concessions they, Russia, would limit the number of seals to be killed on the Island.

Mr. Justice HARLAN.—I do not, from that paper of Russia, find a proposal made to limit the number of seals.

Sir RICHARD WEBSTER.—It is stated by Lord Rosebery.

Mr. Justice HARLAN.—It is not material.

Sir RICHARD WEBSTER.—I do not think it is. I was reading it perhaps a little too shortly; but I think it will be found, on looking at the papers, that it did; but it makes no difference. They agreed to it. Perhaps it would be more important for us if the suggestion came first from Great Britain.

Now I will ask the Tribunal to turn to page 22 where they will find the proposal of Russia dated the 6th of April which led up to the arrangement to which I shall be able to refer very shortly. Mr. Chichkine, writing on the 6th of April, says:

In reply to my note of the 12th (24th) February, your Excellency was good enough to send me a copy of Lord Rosebery's despatch of the 17th March in which the British Government proposes to establish at once a *modus vivendi* on the following basis:

1. The British Government would forbid their subjects to fish for seals within zones of 30 and 10 miles, and would offer the co-operation of their cruizers to carry out that measure. The Imperial Government would engage to hand over to the English cruizers or to the nearest British authority the English vessels seized outside territorial waters in the above mentioned zones, whilst the English cruizers would, in reciprocity, hand over the Russian vessels seized under the same circumstances.

I need not point out the reasonableness of that provision, and contrast it with what is demanded by the United States in this matter.

2. The Imperial Government would limit to a specified number the amount of seals to be killed on the islands.

3. The Imperial Government would authorize an agent of the British Government to proceed to the islands in order to confer with the local authorities as to the working and result of the arrangement.

4. It would be understood that this arrangement should in no way affect the facilities hitherto afforded in Russian ports to English vessels for refuge, repairs, or supplies.

5. The arrangement would not have any retrospective effect, more especially as regards the English vessels seized last year.

I cannot discuss the subject, M. l'Ambassadeur, without calling your attention in the first instance to this fact, viz., that the object of my note of the 12th (24th) of February was to warn the British Government of certain legitimate measures of defence necessitated for the moment by exceptional circumstances, and not to lay down the basis of a regular *modus vivendi*, that is to say, of a bi-lateral arrangement, which might be prolonged until the question was definitely settled.

The only idea was to provide a minimum of protective measures intended to prevent the disappearance of the subject of the dispute, even before the negotiations with regard to it were commenced.

In view of the near approach of the fishing season, which has now already begun, the Imperial Government considered at the date of my note that there would not be sufficient time to discuss and to establish a *modus vivendi*, which would necessarily affect not only questions of interest, but also questions of principle.

If it had been intended to lay down bases of a *modus vivendi* of this kind, the Imperial Government would not have failed to claim that a restriction of territorial rights, that is to say, the engagement to limit the number of seals to be killed on land, should in equity carry with it the corollary of a complete suspension of pelagic sealing in the open sea. They would have especially regarded it as indispensable to make their reservations as regards the definitive settlement of the seal question, in order to retain their entire freedom of view as to the measures to be agreed upon for the preservation of the seal species, whether by the prohibition or regulation of sealing in the open sea, or by the extension of special rights of protection of that species beyond the various distances commonly designated as the limits of territorial waters.

Yet, after making these observations, I am authorized, M. l'Ambassadeur, to inform your Excellency that the Imperial Government being anxious to meet halfway any conciliatory offer on the part of the British Government, are ready to accept the proposal made in Lord Rosebery's despatch, with the exception of some modifications on the first point.

Thus, the Imperial Government would be disposed to limit for the current year the number of seals to be killed on the islands to a maximum of 30,000, reducing thus 20,000 the average of 50,000 provided for in their contract with the sealing Company.

They would not object to an Agent of the British Government coming to the islands in order to discuss matters with the local authorities, and to obtain information from them as to the working and results of the arrangement. The place and the time of his visit should, of course, be fixed hereafter.

Then:

There would certainly be no modification as regards the facilities which English vessels enjoy in Russian ports for refuge, repairs or supplies.

The arrangement agreed upon would have no retrospective force, because the different cases of seizures effected last year have been already examined by a special Commission on the basis of general principles of international law.

It was that to which I referred to-day when I told you that we had known, though we had not been able to mention it before, that this question of the rights and wrongs of last year had been referred to an International Committee and we knew that the Russian distinguished adviser on international law was a member of that Committee, whose opinion we have already referred to in connection with this case.

Finally, in regard to the first point of the proposal contained in Lord Rosebery's despatch, the Imperial Government are of opinion that it would be quite impossible to apply it as it stands, at any rate under the circumstances existing for the present fishing season, especially as to the engagement to hand over to the English cruisers or to the nearest British authority the English vessels caught trespassing outside territorial waters within the forbidden zones of 30 and 10 miles.

Then occurs a discussion, which I do not think my learned friends will think it necessary for me to read, with regard to the alternative suggestion. If they should not happen to find a British cruiser, they must take the vessel to some other port for that purpose.

Then, at the bottom of page 23, Sir Robert Morier states:

That Her Majesty's Government would not consider themselves justified in handing over British subjects and property captured outside of bona fide territorial waters to the jurisdiction of any Government but their own. But there ought to be some way of turning the difficulty, such, for instance, as a British cruiser being stationed at Petropaulovsk or Vladivostock.

Then, on page 24, you will find the draft agreement, which is, I believe, the agreement that has been entered into; I do not remember any modification of it. If there be, it will appear in the later documents; and I read the first paragraph:

During the year ending the 31 December, 1893, Her Britannic Majesty's Government will prohibit British subjects from killing or hunting seals within the following limits:

a) Within a zone of 10 marine miles following the sinuosities of the Russian coasts which border on Behring Sea and any other part of the North Pacific Ocean.

b) Within a zone of 30 marine miles round the Komandorsky Islands, and round Tulénew (Robben Island).

Then:

Her Britannic Majesty's Government undertake to co-operate with British cruizers in preventing British subjects from killing or hunting seals within the aforesaid limits. British vessels engaged in killing or hunting seals within the aforesaid limits may be seized either by British or Russian cruizers, but if seized by the latter they shall forthwith be handed over at Yokohama, or at any port in the British possessions or to the Commander of any British ship of war for trial by the British authorities.

That is what was suggested by Sir Robert Morier as a way out of the difficulty.

The Imperial Russian Government engage to limit to 30,000 the number of seals which may be killed during the whole of the year 1893 upon or around the said Islands of Komandovsky and Inlenew (Robben Island).

It is agreed that a British Agent may when so desired by Her Britannic Majesty's Government, visit the said Islands to confer there with the Authorities and to inquire into the working and results of the present Agreement.

The present Agreement will in nowise affect the facilities hitherto accorded in Russian ports to British vessels as regards refuge repairs obtaining supplies or other matters for which they may properly require access.

It is understood that the present Agreement relates solely to the year 1893. It has consequently no retroactive force of effect—more especially as regards the British vessels captured previously by Russian cruizers.

Then on page 27 will be found the Russian reply to that draft.

I have the honour to inform you that the Imperial Government while accepting the draft arrangement annexed to that communication, prefer to give it the character of an exchange of notes, for the following reasons:

Because the too concise wording of the above-mentioned draft would leave room for certain misunderstandings and perhaps even for complication, which it would be desirable to avoid;

Because the Imperial Government could not agree to the draft in question without some reservations designed to safeguard their freedom of judgment in the future.

It is understood that the agreement to be arrived at between our two Governments will leave intact all the rights of Russia in her territorial waters.

As to our reservations, they refer to the points mentioned below:

1. In consenting to hand over to the British authorities the English ships engaged in sealing within the prohibited zones, we do not wish to prejudice, generally, the question of the rights of a riverain Power to extend her territorial jurisdiction in certain special cases beyond waters properly called territorial.

2. The Imperial Government desire to preserve complete liberty of action as to choosing in the future between the two systems of protecting seals, either by the method of a prohibited zone or by the method of entirely prohibiting pelagic sealing, or regulating it in the open sea.

3. The present arrangement cannot in any manner be considered as a precedent, and will be looked upon by us as of an essentially provisional nature, intended to meet present circumstances.

I pause to note here I think nothing could be more reasonable than Russia reserving her position at the present time. We know from the correspondence that has been printed she had been kept in constant and close communication with the United States. We know that she declined to ally herself with the United States in their contention; and this question is now raised before a great Tribunal, and if the result of this Tribunal should be to declare property in these animals *feræ naturæ* on the high seas or to declare the right of a nation to exercise these extraordinary rights of seizure and search, it was certainly most reasonable that Russia should not have bargained herself—so to speak contracted herself out of the opportunity of taking advantage of this award.

Senator MORGAN.—Has there been any complaint or is it a fact that pelagic hunting has existed on the Japanese or Russian coasts by following up the herds before they reached the lands.

Sir RICHARD WEBSTER.—To a certain extent, but not much practically speaking, though there was some, as appears. Until the *modus vivendi* the pelagic sealers had not gone across to the western side of the ocean.

Mr. PHELPS.—Will my learned friend allow me to ask him from what he infers the Russian Government declined, as he says, to participate with the United States on the ground they did?

Sir RICHARD WEBSTER.—The letter has been read and it is printed at page 22. The date is the 10th June, 1891.

Mr. PHELPS.—That I am aware of.

Sir RICHARD WEBSTER.—It is from Sir Robert Morier to Lord Salisbury, and it stated the question of seal hunting in the Behring Sea had formed the subject of continuous negotiation between the United States Government and his own for a very considerable time and many pro-

posals had been submitted to him by the United States Department, to none of which, however, had he been able to give his assent. There are other letters, though they are not stronger than that.

Mr. CARTER.—Are there any others that have any value?

Sir RICHARD WEBSTER.—Yes, there are, and I will give my learned friends references to the others, should they desire to know those which I rely upon, but I am quite satisfied with that I stated from the correspondence to which attention was called this morning and from this correspondence, it is perfectly plain and quite proper that Russia while declining to endorse the view taken by the United States was naturally willing and anxious to reserve to herself the benefit of this discussion, should it turn out the United States were right.

Then, if you will kindly look at the bottom of page 27:

With these reservations, we accept the British proposal in the following terms.

There is no alteration in the terms which I read; and the final assent is given on the 29th of May, 1893, by Lord Rosebery to Mr. Howard:

With regard to the reservations made in Mr. Chichkine's note you will state that Her Majesty's Government have taken note of them, but do not at present propose to discuss them; that, on the other hand, they must adhere to the reservation previously made by them, and contained in your note of the 12th of this month, and that it is understood that the rights and position of either Power are in no way affected by the conclusion of this provisional arrangement.

Now, Mr. President, on page 29, appears the assurance or answer from Sir Robert Morier, in consequence of which, as Mr. Phelps informed the Tribunal, Lord Rosebery last week introduced the Bill to give effect to this *modus vivendi;* for, without the consent of Parliament, the rights of British subjects cannot be interfered with on the high seas. And it was on that occasion, as Mr. Phelps rightly stated, that Lord Rosebery, not being then in a position to announce the satisfactory conclusions with reference to the claims made by Great Britain, stated that the matter was under discussion; but it is the fact, as the Attorney-General has told you this morning, since then, having fully investigated the matter, Russia has adopted that line which was in accordance with all her previous actions, for she stated, as appears by this correspondence, that no vessels had been illegally seized because they were within the 3 miles or had just gone out of it; and, in accordance with that, she has acted throughout.

Senator MORGAN.—Is it intimated in this correspondence, or is there any action of the Government, as to how far the Russian Government would have been authorised to follow those vessels after crossing the line?

Sir RICHARD WEBSTER.—I do not know; but I really speak without having looked up the subject lately,—I do not think that there is any limit of distance as to hot pursuit. I know that the question has been raised whether you can follow them into other territories,—I know it has been raised with reference to the high seas; and I should think you can go for 40 or 50 miles in hot pursuit. I am now speaking of matters that have come before me when I was Attorney-General, with reference to France and Germany, where the right was recognised to follow vessels that had broken the Fishery Conventions on the high seas.

Senator MORGAN.—Would not that rather be, Sir Richard, *ex proprio vigore?*

Sir RICHARD WEBSTER.—Well, I should hardly say that, Sir; but by the assent of Nations to the arm of the law being stretched. I do not think it would be quite right to say it was done *ex proprio vigore,*

though I agree it is an extension of municipal law. That was a point I endeavoured to argue before you, and I hope made clear, some few days ago.

From beginning to end of these transactions there is no foundation for the statement made in the argument that Russia was exercising these rights in support of the same principles as the United States were claiming in 1886 down to 1892—they had certainly as strong a case as to original jurisdiction. If the United States had a good case up to that boundary line to the east of it, Russia had the same case to the west of it, but we know from this and from everything that has gone before that no such case was made by them. But I ask you, Sir, not to forget when I come later on to discuss this question of zone that with the fullest knowledge of the matter and investigation upon their Islands Russia has come to the conclusion a 30-mile zone is sufficient and is only required in consequence of special circumstances and that a female seal when actually at the Islands are never to be found far from the islands and even in cases in which it is evident the Russians think during a certain portion of that time they go for food—it is obvious that the opinion of the Russian officials is that during a portion of the time the female seals go out for food, so that I am justified from an impartial view in one sense, and on the other hand an interested view—on looking at the matter fairly—in saying that an arrangement has been come to which is a corroboration of the case the Attorney General pointed to this morning I pass from that incident. The real importance of it was that the Tribunal should have the real facts; and as, interlocutorily, my friend Mr. Carter spoke of us introducing fresh evidence, I do not agree that that is the right view of the matter. The Tribunal wishes to have the real facts and from those real facts it will be seen we submit that the assumption or inference drawn by the United States as to Russia's action was not well founded.

Now, Mr. President, I desire to supplement what has been said by the learned Attorney General with regard to the question of area as briefly as I possibly can. I must not, I am afraid, pass over the subject altogether because as I indicated to you it is an important question. While it is for this Tribunal to decide the ambit of its own jurisdiction and the terms of the Treaty, it yet is of extreme importance (having regard to what may be said hereafter as to the conduct of the two nations in dealing with this matter) that this question of area should be fully and clearly (but I hope not at too great length), discussed before the Tribunal. My friends remind me that I had not read the telegram received from the Foreign Office this morning; but the learned Attorney General read it.

Mr. CARTER.—Yes, and he read it without giving us the opportunity to object to it which we regretted. But we do object to it and do not consider it in.

The PRESIDENT.—I consider you may make use of whatever public documents you have, because those we all know. You cannot use them as evidence, but as general information; but as to documents which are not public I think you cannot use them unless they have been inspected by the other side.

Sir RICHARD WEBSTER.—The objection of my friend (I say it in all seriousness), if he will only think for a moment, does not amount to anything. It is not a question of what may be called public documents, although it will be a public document before twenty-four, or forty-eight hours have passed.

Mr. CARTER.—It is a telegram.

Sir RICHARD WEBSTER.—I know; but you do really have telegrams sometimes. The fact is that Russia insists upon her right to seize vessels whose boats have actually been sealing in territorial waters, and does not insist, but on the contrary pays compensation to those vessels whose boats they could not prove to have been inside territorial waters. What complaint there can be, I cannot understand.

The PRESIDENT.—Of course we do not doubt your assertion personally, but it is a personal assertion.

Sir RICHARD WEBSTER.—You must not say my personal assertion, Sir.

The PRESIDENT.—You bring it personally forward.

Sir RICHARD WEBSTER.—You will be good enough to understand, Sir, that it is not my personal assertion—it is a statement made by the learned Attorney General speaking of a communication made to him in his official capacity from the Foreign Office. You must not put it on me—I mean to say a communication would not come to me—it came to the learned Attorney-General, and was read by him.

Mr. CARTER.—We must not admit the right of Counsel on the other side to read communications (by whatever name they may be called) merely from the Foreign Office of Great Britain. They are communications perhaps stating facts which may be deemed of greater or less importance to the inquiry here, and facts therefore which it may be necessary for us to meet. We have not a Foreign Office within twelve hours communication. We cannot communicate with Russia for the purpose of ascertaining what the full facts were.

It certainly will not be permitted by this Tribunal, I should suppose, that a partial view of facts may be presented here without any opportunity to the other side to make that view full and complete—that surely is not the way in which the question should be brought before this Tribunal. Therefore we feel bound here to object generally to the introduction of new evidence which certainly must be considered to be irregular; and inasmuch as no provision is made for it by the Treaty—and it is particularly irregular as we think for Counsel to get up on the other side and offer new evidence without even asking the permission of the Tribunal for doing so—getting it in simply without provision, before the Tribunal, for what it is worth. That of course we must be understood most distinctly objecting to, and hope it will not be permitted.

Sir RICHARD WEBSTER.—I would rather abstain from answering any complaint of my friend Mr. Carter. I have not, by my assertion—nor has my learned friend the Attorney General sought in any way to introduce fresh evidence. He has simply sought—and I should submit to the Tribunal for their judgment properly sought—to remove an impression which would have been made upon the minds of the Tribunal, by a passage in Mr. Phelps' argument for which we knew there was no foundation.

Mr. CARTER.—If there was no foundation for it, that could easily be shown.

Sir RICHARD WEBSTER.—But I say—my friends have the fullest notice now—if we had made any mistake, they have the same means of communication that we have.

Mr. PHELPS.—With the Foreign Office?

Mr. TUPPER.—With Russia.

Sir RICHARD WEBSTER.—With their own Foreign Minister in Russia. But really, Mr. Phelps, I am sure you will understand what I mean—that there is no ground for the suggestion that my learned friend the Attorney General, (in stating that which he knew to be the

fact officially), was doing otherwise than giving you the earliest friendly notice, according to our view, that a mistake had been made in the inference you attempted to put on certain acts in your argument which for the first time he told us we saw when that argument was presented.

Mr. CARTER.—We take a wholly different view.

The PRESIDENT.—I think we should maintain a distinction between documents which are public. If you mention that which is merely mentioning any fact or statement from a public paper, it is for us to consider the importance that should be attached to it; but as to other documents not public which are altogether private or almost private—that are official and confidential, at any rate, communication from your government to Counsel, I think we must reserve our opinion on that, and upon the use you may personally be going to make of them, until those documents or communications have been communicated to your friends on the other side and inspected by them.

Sir RICHARD WEBSTER.—I entirely agree if I may be allowed to say so; I only desire to point out that the communication to the Attorney General was only the fact of the telegram being received or communication being received officially from Russia—just in the same manner as this book that I hold up—although it has not become a Parliamentary paper. But I follow you, Sir, in what you say, and I will take care that as far as possible it shall not rest upon that statement of the Attorney General or any document which is not equally at the disposal of my friends. There will be ample time. The distinction you have drawn is of course a most important one, Sir, and one which at any rate I should not have overlooked, but I again point out that it is in order to remove a false impression not established by what I may call, shortly, the facts of the case.

The PRESIDENT.—We have perfect faith in your intention.

Mr. PHELPS.—My friend should understand now that I shall maintain in the close of this argument, the absolute correctness of every thing that is there said in respect of the action of Russia; and, not the least, from the very correspondence that we have permitted them to introduce to-day.

Sir RICHARD WEBSTER. I am perfectly willing that my friend.

The PRESIDENT.—I think we had better let Mr. Phelps argue tha in his turn.

Sir RICHARD WEBSTER.—I was about to make that observation. I cannot preclude my friend Mr. Phelps from arguing every thing; I have given him the fullest materials upon which to support his contention if he can.

Now, Sir, when you were good enough to make that observation to me, I was about to argue, and to argue for a very short time as briefly as I possibly can, the question of jurisdiction.

Senator MORGAN.—Before you proceed to that, is this agreement of Russia to pay damages part of the *modus vivendi?*

Sir RICHARD WEBSTER.—No, quite independent—it is kept independent by both. It is stated in terms that the *modus vivendi* is to have no operation on the seizures last year which were to be governed by the ordinary principles of International law.

It is understood that the present Agreement relates solely to the year 1893. It has consequently no retroactive force or effect—more especially as regards the British vessels previously seized by Russian cruizers.

Neither Great Britain nor Russia wished or intended to put that as operating with regard to those seizures—they desired that that should be outside. May I be permitted to remind you again that the question

of liability of Russia was referred to a Committee; and it was not (this appears in these documents), until after that Committee had reported that the decision was come to.

I must not be tempted to make any further incursion on my time or upon the time of the Tribunal by referring to the observation of Mr. Phelps. I pass at once to the point to which I invite a few minutes attention, and that is as to what is the area over which the Regulations are to be made.

Now I begin by saying that if it is desirable to consider the whole question of seal preservation, most unquestionably the area *outside* Behring Sea as well as the area *inside* Behring Sea, ought to be considered; and not by one single word of mine do I mean to.—

Senator MORGAN.—Do you mean that is within the powers of the Tribunal.

Sir RICHARD WEBSTER.—No, I say it is not within the powers of this Tribunal—I say it is a general question of dealing with seal life as a whole which ought to be dealt with by anybody who is discussing the whole question.

Senator MORGAN.—How can we deal with it unless it is within the powers of the Tribunal?

Sir RICHARD WEBSTER.—It is contended by us Senator that it is not within the powers of the Tribunal. It has been argued by my friend that it is not. He asked me to present to the Tribunal any additional observations that occurred to me on that question of area and I was about to present to you some observations and submit them to your judgment, to show that the ambit of Article VII is the same as the ambit of Article VI—in other words that the ambit of Article VII relates to regulations to be made in some part of Behring Sea eastward of the line of demarcation defined by the Treaty of 1867.

Nobody will at any rate accuse me, I am sure, of desiring in any way to overlook or minimise or belittle the difficulties which are in my way. I quite agree if you simply look at the language of Article VII by itself without reference to the rest of the Treaty, without reference to the other arguments words used at the same time, or without reference to the real questions which had arisen between the parties, then you might say the words are sufficiently large. But as a question of construction I am submitting to the Tribunal that the ambit of Article VII was intended to be the same as that which had been the subject of discussion and dispute between the parties, and which is covered by Article VI.

I must, I am afraid, refer to a very few documents. I will ask the Tribunal to be good enough to follow me with them that I may be as brief as I possibly can. I will ask them to take the United States Appendix, volume I; and I will refer only to documents in that book, with one very brief exception. At page 286 the letter under date of the 17th of December, 1890, from Mr. Blaine they will find the first form of Article VII. It was then the 6th question and it is well that I should read to the Tribunal what the first form of Article VII was:

If the determination of the foregoing questions shall leave the subject in such position that the concurrence of Great Britain is necessary in prescribing regulations for the killing of the fur-seal in any part of the waters of Behring Sea, then it shall be further determined: First, how far, if at all, outside the ordinary territorial limits it is necessary that the United States should exercise an exclusive jurisdiction in order to protect the seal for the time living upon the islands of the United States and feeding therefrom. Second, whether a closed season (during which the killing of seals in the waters of Behring Sea outside the ordinary territorial limit shall be prohibited) is necessary to save the seal-fishing industry, so valuable and

important to mankind, from deterioration or destruction. And, if so, third, what months or parts of months should be included in such season, and over what waters it should extend.

There will be found in that letter, Mr. President, other passages supporting our views; but in the interest of that brevity to which, I have alluded very often I am going to keep very closely indeed to this matter and refer only to the most important passages. So far, I submit, it cannot be successfully disputed that the question distinctly pointed to Behring Sea or a part of Behring Sea, and had no reference to regulations outside Behring Sea.

That form of question was objected to by Lord Salisbury on the 21st of February, and in view of the suggestion that by the terms of the treaty we are supposed, to have enlarged that question I will ask the Tribunal to look at the language in which that question was objected to. I refer to page 294 of the same volume, reading from the letter of the 21st of February, 1891, just before the end of the letter.

The sixth question, which deals with the issues that will arise in case the controversy should be decided in favor of Great Britain, would perhaps more fitly form the substance of a separate reference. Her Majesty's Government have no objection to refer the general question of a close time to arbitration, or to ascertain by that means how far the enactment of such a provision is necessary for the preservation of the seal species; but any such reference ought not to contain words appearing to attribute special and abnormal rights in the matter to the United States.

On the 14th of April, at page 295, you will find the sixth question repeated by Mr. Blaine, with this comment in the beginning:

While Lord Salisbury suggests a different mode of procedure from that embodied in the sixth question, the President does not understand him actually to object to the question, and he therefore assumes that it is agreed to.

Then, Mr. President, Mr. Blaine again repeats the sixth question in the same terms as before, containing in it the words:

in any part of the waters of Behring Sea, then it shall be further determined: First, how far, if at all, outside the ordinary territorial limits it is necessary that the United States should exercise an exclusive jurisdiction in order to protect the seal for the time living upon the islands of the United States and feeding therefrom? Second, whether a closed season (during which the killing of seals in the waters of Behring Sea outside the ordinary territorial limits shall be prohibited) is necessary to save the seal-fishing industry, so valuable and important to mankind, from deterioration or destruction? And, if so, third, what months or parts of months should be included in such season, and over what waters it should extend?

On the 3rd of June, 1891, page 305, Sir Julian Pauncefote proposes the commission of experts, which, as you are aware, subsequently took the form of the two commissioners nominated by either party.

In lieu thereof they propose the appointment of a commission to consist of four experts, of whom two shall be nominated by each Government, and a chairman who shall be nominated by the Arbitrators. The Commission shall examine and report on the question which follows:

For the purpose of preserving the fur-seal race in Behring Sea from extermination, what international arrangements, if any, are necessary between Great Britain and the United States and Russia or any other power?

On the 4th of June, page 307, Mr. Wharton, writing to Sir Julian Pauncefote—when, as you will see Mr. President, there was no dispute about the question at all—uses this language. I read from page 307, the 5th line from the top:

I am also directed to remind you that the contention between the United States and Great Britain has been limited to that part of Behring Sea eastward of the line of demarcation described in our convention with Russia, to which reference has already been made, and that Russia has never asserted any rights in these waters affecting the subject-matter of this contention, and can not therefore be a necessary

party to these negotiations if they are not now improperly expanded. Under the statutes of the United States the President is authorized to prohibit sealing in the Behring Sea within the limits described in our convention with Russia and to restrict the killing of seals on the islands of the United States, but no authority is conferred upon him to prohibit or make penal the taking of seals in the waters of Behring Sea westward of the line referred to or upon any of the shores or islands thereof. It was never supposed by anyone representing the Government of the United States in this correspondence, or by the President, that an agreement for a *modus vivendi* could be broader than the subject of contention stated in the correspondence of the respective governments.

I need not remind you, Mr. President, the *modus vivendi* are temporary regulations—regulations for 1891 and regulations for 1892.

Negotiations for an arbitration have been proceeding between the United States and Great Britain, and, if these powers are competent to settle by this friendly method their respective rights and relations in the disputed waters upon a permanent basis, it would seem to follow that no question could arise as to their competency to deal directly with the subject for a single season.

That is, of course, my point put very graphically and clearly by Mr. Wharton.

On the 9th of June, page 312 of the same volume—

Lord HANNEN.—We have had all these, you know. I see every passage has been scored by me as already read.

Sir RICHARD WEBSTER.—I will accept the hint, my Lord. I am extremely obliged for a hint of the kind; and whatever may be the consequences to myself I am quite satisfied, I may say, to take the suggestion made by any member of the Tribunal.

The PRESIDENT.—Do you not believe the limitation put by Mr. Wharton in this dispatch of June 4th, related merely to the prerogative of the President?

Sir RICHARD WEBSTER.—Certainly, Sir.

The PRESIDENT.—And you say the *modus vivendi* practically entered into afterwards had been submitted to the Senate?

Sir RICHARD WEBSTER.—But that also was limited to the same area.

The PRESIDENT.—The point of Mr. Wharton is that the President could only make regulations temporary for the Behring Sea.

Sir RICHARD WEBSTER.—You will observe, Sir, that the *modus vivendi* which goes to the Senate goes no further. The *modus vivendi* does not go outside Behring Sea at all. That is my view.

The PRESIDENT.—All these treaties went to the Senate when they had nothing to do with the power of the President.

Sir RICHARD WEBSTER.—I entirely agree, Mr. President. I point out that the *modus vivendi*, to which you have referred, which went to the Senate, limited the damages to be paid and limited the remedies to be given to the respective Governments to the area of Behring Sea.

Senator MORGAN.—Do you mean the first or the second?

Sir RICHARD WEBSTER.—Both of them—both in 1891 and in 1892.

Senator MORGAN.—I am not aware that the one of 1891 went to the Senate.

Sir RICHARD WEBSTER.—Then I correct that with regard to that one going to the Senate.

Senator MORGAN.—The one of 1891 did not go to the Senate, but the one of 1892 did go to the Senate, and was incorporated in the treaty.

Sir RICHARD WEBSTER.—My mind is entirely acting upon the same line. Whether I am right or wrong I have no right to say.

The PRESIDENT.—I think there is a distinct intimation in the letter of Mr. Wharton, at page 315, that the preservation is to be extended to the North Pacific Ocean.

Sir RICHARD WEBSTER.—Because, Mr. President, you will remember that there was proceeding at the same time the collateral line of negotiation with regard to an arrangement to which all the interested nations should become parties. You have to consider most carefully whether the letters which are referred to relate to the discussion between the United States and Great Britain solely, or relate to that other negotiation which was going on all the time.

Would you kindly look, Sir, to the letter you have been referring to, page 316.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE, *Washington, June 13, 1891.*

SIR: The President directs me to say, in response to your note of this date, that his assent to the proposition for a joint commission, as expressed in my note of June 9, was given in the expectation that both Governments would use every proper effort to adjust the remaining points of difference in the general correspondence relating to arbitration, and to agree upon the definite terms of a submission and of the appointment of a joint commission without unnecessary delay.

Therefore I submit that independently and collaterally to the agreement which affected Great Britain, and affected the United States alone, there was this parallel line of negotiation; and my reply to that reference to the North Pacific, Sir, is that you will find the North Pacific referred to many times, and referred to by nobody more pointedly than by Lord Salisbury, at a time when he was desirous and at a time when Mr. Blaine on behalf of the United States was not desirous that the whole question should be dealt with in the way of arrangement between the United States, Great Britain and other nations who were to be interested in the matter.

That is my answer to the point to which you were good enough to call my attention. I submit you will not forget, Sir, that the United States Government did not attempt to go outside Behring Sea until this year. It was only in this year, 1893, attending the sitting of this Arbitration, while the Arbitrators were actually sitting, that a bill was passed to enable the President to give effect, so far as United States citizens were concerned, to any award made by this Tribunal. Therefore, the action of both countries, both Great Britain and the United States, points to the fact that up to the time of the delivery of these arguments, the suggestion of the Tribunal being seized of the control of matters outside Behring Sea had not, at any rate, as we submit, formed the subject of agreement or even of discussion between the parties.

I equally agree—I have said so more than once, if you merely take the language of article 7 quite apart from the other articles of the treaty, quite apart from the fact that you are dealing with questions which have arisen concerning the preservation of the fur-seal in or habitually resorting to the said sea, if you will look at the language of article 7 apart from that, the terms would seem to be wide enough to give you power to go below.

Senator MORGAN.—The same terms are used in article I.

Sir RICHARD WEBSTER.—I quite agree, sir; and that, of course, does not militate against my point, whether it be a good point or whether it be a bad point.

Senator MORGAN.—I had supposed when the treaty came to be formulated and the text was finally determined, that the question was

changed from one of geographical boundaries limited by Behring Sea to one relating to a class of seals that were in or habitually resorting to Behring Sea, and that therefore the powers of the Tribunal were extended to such regulations as might be sufficient and proper for the protection of all that class of seals.

Sir RICHARD WEBSTER.—Mr. Senator, I cannot help saying—I say it with all respect—that I think any such view would be, looking at it broadly, a one-sided and unfair view. The United States within their rights, for reasons best known to themselves, had said, "We will not allow you to bring before the Tribunal as a matter of regulation anything upon the islands". The United States, for reasons best known to themselves, endeavored to withdraw from the Tribunal even the consideration of what was going on upon the islands. They have protested that it is immaterial except so far as it bears on the question of decrease. They could not, of course, shut our mouths with regard to that part of the case; but they said, "Regulations upon the islands as such cannot be made", and the Attorney-General agrees, and I of course agree, that that is so. But it is equally certain that regulations might be necessary for the preservation of the seal species upon the islands. It is perfectly plain they might be necessary, as, for instance, if the lease permitted much too large a number to be killed. Supposing the 100,000 a year should turn out to be much more than ought to be killed on the islands. There is nothing more unreasonable in the area outside Behring Sea not being submitted to this Tribunal any more than the question of regulations on the islands being submitted.

Senator MORGAN.—Regulations on the Islands, Sir Richard, were not even the subject of negotiation.

Sir RICHARD WEBSTER.—I beg Senator Morgan's pardon, with great deference. I do not desire to go back upon that; but I could point out, if I were to go into the whole of this correspondence, that in the earlier stages that it was suggested on behalf of Great Britain, and objected to by the United States.

Senator MORGAN.—But it was abandoned.

Sir RICHARD WEBSTER.—But that is my whole point, Mr. Senator. You do not shut it out from the area of investigation when it has been abandoned.

Senator MORGAN.—I thought it did.

Sir RICHARD WEBSTER.—Well, you shut it out from being that which was to be dealt with by the parties, but it is clear that the original conception of Sir Julian Pauncefote was that the whole question of seal life should be examined into, and I must not be tempted by what you have said to me but I must remind you that the Commissioners in 1891 put it beyond all question that Lord Salisbury did instruct the British Commissioners to go into the whole matter.

Senator MORGAN.—That was before the Treaty was signed.

Sir RICHARD WEBSTER.—But it would not make any difference, Sir. May I remind you, Senator Morgan, that when we were arguing some days ago with regard to the question of the function of the Commissioners, you then put to us that it was all in view of the treaty. Now when I remind you of this power of the Commissioners, you say it was before the treaty was signed. I only ask the same rule may be applied in both cases.

I will not pursue that further. I will go at once to my point, if I can. I only say, with great respect, to every member of this Tribunal, that as between the parties, what was submitted to this Tribunal was jurisdiction over and regulations in Behring Sea, and that the United States

withdrew, properly if you like—I care not whether properly or improperly withdrew within their rights direct jurisdiction over the islands; and I say equally that Great Britain never submitted, if that is the proper expression, jurisdiction as to regulations outside Behring Sea.

Senator MORGAN.—I did not insist upon that. I insisted that both Governments had agreed that this Tribunal might take cognizance of the necessary measures for the protection of fur-seals in or habitually resorting to Behring Sea.

Sir RICHARD WEBSTER.—If you were to take those words by themselves, they would include the islands. If the words were to be strained against me in that way, it would actually include the islands. The measures which are necessary to preserve the seals—

The PRESIDENT.—But there are other words.

Sir RICHARD WEBSTER.—I say if you were to take the words the learned Senator puts to me by themselves, it would have included the islands.

Senator MORGAN.—Not unless the Sea means islands. I do not see how they could.

Sir RICHARD WEBSTER.—I must not appear to be arguing with you too much, Sir; but I will call attention to the "proper protection and preservation of the fur-seal in or habitually resorting to Behring Sea". Now, if the words had not followed, "What concurrent regulations outside the jurisdictional limits of the Governments are necessary", then the words which you were good enough to call my attention, namely, "regulations for the preservation of the fur-seal frequenting the islands" would have included the islands as well. It is for that reason, Sir, that I press upon this Tribunal that whatever may be the construction they put upon Article VII, which was entirely within their own power, I cannot do more than suggest the view that we contend for to them, whatever construction they put upon it: viz that Great Britain in agreeing to this Treaty, was neither told, nor believed, that they agreeing to submitting regulations outside of the Behring Sea to Arbitrators.

I have said all I intend to say upon the matter, because it has been fully argued; and it was only defference to the wish of my learned friend, the Attorney-General, that I referred to the matter at all again.

Senator MORGAN.—I know you will pardon my desire to ascertain exactly what are the powers of this Tribunal because I do not wish to exceed them in any case or under any circumstances. This is all I am addressing my remarks to.

Sir RICHARD WEBSTER.—Now, Mr. President, I shall not refer again to the question of area; but I will ask you to permit me to deal with Behring Sea first; because whatever be the view, that which gave rise to the discussion, that which called for this Treaty, that which the United States sought to interfere with, was Behring Sea. And I cannot help thinking that upon this question—it is not a matter which you will lose sight of at all—that up to this day they have never moved hand or foot to interfere with their own nationals and their own ships that were sealing outside Behring Sea, almost to as great an extent as the vessels of other nations. Therefore I shall not be doing wrong if I direct the attention of the Tribunal as closely as I can to the question of Behring Sea.

Mr. President, I propose to state the propositions to which I am going to address my argument. I have formulated them because, as I indicated to you early this afternoon, I believe no living man, certainly no man with my capacities, could possibly hope with effect to address the Tribunal upon every issue in this case. Every single matter has been

picked out and made the subject of voluminous affidavits, without the least regard to whether it was of great importance or not; and I hope to concentrate the attention of the Tribunal upon the important points.

I accept the two cardinal principles recognized by the British Commissioners in their most impartial and fair report—a report which never ought to have been attacked as it has been—that no gravid female ought to be killed, so far as it can reasonably be avoided, and that no nursing female upon whose life of the pup depends, ought to be slaughtered, or injured in any way.

Those are the two principles upon which I propose to argue this question of regulations. Do not let it be thought that I make those concessions from the point of view of one course being cruel and the other not. I trust that I have as strong a feeling upon the question of cruelty to animals as anybody living; but I shall demonstrate, I trust, before I come to the end of the argument on the question of regulations, that the outcry, the prejudice, that has been endeavored to be imported into this case from the point of view of cruelty, the exaggerated color which has been given to incidents that do occur or have occurred in the past, is wholly unjustifiable and unwarranted, and that when you look at the real facts, we have nothing to fear from an examination of this case from the point of view of cruelty. I merely mentioned that, Sir, that you may not think that I am shrinking from any onus or burden that may rest upon me in enunciating these propositions. I do not enunciate them upon any consideration from the point of view of cruelty. I look upon them, so far as a counsel may look upon them, in the point of view of what ought to be provided.

It seems to me that upon the simple principle that has governed and controlled the game laws of all civilized people, the killing of a female which is about to bring forth its young, or upon whose life the lives of the young are dependent, is a matter which no Tribunal would endorse by recommendation, and that therefore the contrary of that what would commend itself to the mind of this Tribunal.

From that point of view, Sir, what do I propose to establish? I propose to establish on testimony quite independent of any report which has been disclosed to us during the course of these proceedings—although I shall not hesitate to make plain what has been the conduct of the United States in connection with Elliott's report—I propose to establish upon our evidence which was obtained long before we had seen or knew of the contents of Mr. Elliott's report, the following propositions: that the thick zone of seals is near the islands; that is to say that the zone in which the seals ought to be preserved by their numbers, and ought to be left undisturbed, is to be found near the islands; that outside a zone of twenty miles, the seals are comparatively sparse, that is to say, as compared with the numbers that are inside the twenty miles, very sparse indeed; but that outside the zone of twenty miles, they become so sparse that they may be taken to be scattered seals, as distinguished from what I may call numerous, or seals in large numbers; and in that connection I wish to submit to the Tribunal that a zone of thirty miles, for reasons which I shall call attention to upon the evidence, being the same distance which has been, as you know, already the subject of negotiation between Russia and Great Britain, gives a margin of very great safety. Add to that the observation already made by my learned leader, that all these zones have attached to them, *ex necessitate*, another margin which may be put at twenty-five to fifty per cent, due to the absolute necessity of the persons who have to respect the zones not trespassing within them.

So much for what I propose to establish as to the question of the population of Behring Sea by seals. I then propose, Sir, to establish that as a rule the seals do not feed while resorting to the islands. I must not be misunderstood or my language must not be so framed that my learned friends can merely quote it without fully appreciating what I mean. I am not suggesting that occasional seals may not go out and get food. I am not suggesting that early in the year before they go to the islands, and later in the year, even though they may be going back again for a small portion of time, two or three days, that they never feed, nor anything of that kind. My case is that speaking of the seals, both male and female, while they are upon the islands as distinguished from being in the Sea, they do not feed. They go in the water constantly while they are upon the islands. We know that practically every seal upon the islands, other than the bulls, goes into the sea. But the important contention will be upon the evidence that the seals, speaking of them as animals which are for the time being out of the water and on the land, do not feed.

Next I shall endeavour to establish that from three to four weeks certainly, I know that there is some evidence of a rather less length of time, but that from three to four weeks after the birth of the pup the females do not go into the water again, or, in other words, that for a period of from 17 days as a minimum up to four or five weeks as a maximum, although the work of the nutrition of the pup is going on during that time, although possibly the growth is more rapid then than at other times the mother is able to supply the milk without obtaining any food other than that which her own condition gives. That is by no means unknown altogether in natural history, I only mention that by the way, but that the Tribunal may understand my case in regard to that matter I repeat, speaking of the females, it appears that from three to four weeks after the birth of the pup, the mother does not go to the sea for food.

Lord HANNEN.—In order that I may gather precisely your meaning what other mammal is there known where under those circumstances the female does not feed.

Sir RICHARD WEBSTER.—Both the other races of seals which is the nearest possible the hair seal and I think the harp seal, but there is evidence about them my Lord, and apparently the walrus and I rather think the sea lion; there are, four or five of this group of animals that have this peculiarity, or rather feature, because I do not think it is right to call it a peculiarity. I submit the period of 17 days or whatever it may be is quite as remarkable as any other period.

Lord HANNEN.—I cannot agree to that. A 17 days' fast is not as remarkable as 40 days.

Sir RICHARD WEBSTER.—No, but then I had not said 40 days, my Lord. I only said from the point of view we are considering the animal must have drawn on some internal resources during that 14, 15, 16 or 17 days. I think there can be no doubt about it. Your Lordship does not desire that I should argue the point now?

Lord HANNEN.—No, I only wanted to know what was passing in your mind. You say that the other pinnipeds have the same characteristic.

Sir RICHARD WEBSTER.—Yes, but I think one can see, when one comes to consider this question, as fairly as possible, for some reason or other the habits of this seal necessitate in both male and female the power of self-sustenation or support for a considerable period of time. I think the evidence as to when the pup can support itself is left in a very uncertain condition. There is substantial evidence that it does begin to support itself after three or four weeks old, not that it ceases

from sucking; and probably members of the Tribunal will know if they have studied natural history that many animals go on sucking for a long time after it is unnecessary. It is not unknown with four-footed animals, and I believe also, not unknown with others—it is known with regard to descendants of the human race. It is a fact. It is a fact, and you should by no means draw the conclusion that pups cannot support themselves, because when killed they have milk in them.

A striking instance of that was given by my learned friend Mr. Coudert. He said the pups killed in October or November had milk in them, and suggested that this proved that they were not able to support themselves because they had milk in them, but that is at a time when, according to all accounts, they would be able to support themselves, because they were within a day or two of taking to the water for their winter voyage. I submit that there is no doubt that as long as there are female seals on the land with milk, some of these pups will suck their mothers when they get the opportunity. I only mention that to show how very uncertain is the evidence upon which you would form a conclusion as to when the pup can support itself is, I think, after 4 or 5 or 6 weeks or two months the pups do feed in the sea partly upon sea animals of the small kind and partly upon the *algæ* or seaweed, and are not absolutely dependent on the mother but can support themselves very soon after four or five weeks.

I think it must be so for another reason, which I will expand later on. Shortly after the 6th of July, large numbers of pups were found in other parts of the island; and it is doubtful if their mothers find them again. I do not mention that for the sake of saying that the mother has not a natural instinct to come back to the pup; but it will be found to have some bearing upon the question whether the pup is absolutely dependent on the mother after a certain date.

Then, in this connection of food, I shall call attention to the very remarkable evidence which up, to the time of this case, has never been disputed. It is not a very savoury subject, but it is one which has to be examined with some little care; I mean, the absence of all *excreta* or *dejecta* from these animals upon the Islands.

I mention that, because it is a most remarkable thing, when we come to the United States Case, they think nothing of throwing overboard the unanimous testimony and consent of everybody else who has examined the question previously saying that an affidavit made for the purpose of this case is to be preferred to the knowledge of other people who have independently examined this matter without the slightest motive for saying that which is untrue or to exaggerate it. I shall have to call attention to that in connexion with an incident to which I shall refer. Then, following out this line of argument I shall call attention to the fact that upon the evidence there is abundance of food near the islands, and further to a very remarkable solution which is endeavoured to be given by one of the United States witnesses with regard to why the females do not take the food near the islands which he admits to be there in large quantities. That is that some males are so busy catching the fish that the female seal knowing that there are plenty catching these fish she goes to a place which is more distant to catch other fish, because she will be less disturbed than where the males are near the islands. It is a remarkable suggestion and does great credit to the gentleman who thought it out. I will read that affidavit in connection with a part of the case to which I have referred namely, the proof that there is abundance of food near the islands, and then I shall endeavour to make good the statement made by the Attorney General that there is substantial evidence leading us to the belief that the

females killed at long distances from the islands are probably females in whom the milk is drying up, or who have left the islands not with the intention of returning during that season.

That might be for many reasons, among others, the death of the pup, which we know occurs, and it is the case of the United States that it does occur from causes perfectly independent of pelagic sealing, and also from the fact that the earlier births—pups born in the middle of June, some even in the earlier days of June—those which are born before the end of June would be weaned or independent of the mother some time at the end of July or the beginning of August which may account as it does for a certain number of females with milk being killed. It is an important thing to note in the United States affidavits scarcely any attention has been called to this question, what was the condition of the milk found in the mother. As I submit, upon the fair view of the evidence in which nursing mothers have been slaughtered by pelagic sealing that might be the reason.

Then Mr. President you will notice that I have endeavoured to keep all questions of attack upon the way in which the islands have been managed quite independently to the end because I want, if the Tribunal will believe in my wish to argue, fairly the question of regulations from the point of view of what they ought to be assuming the islands to be properly managed—what would be the proper regulations necessary for the preservation of life, that is to say proper regulations at sea for the preservation of the fur-seal.

It cannot be seriously contended that it is necessary to preserve seals at sea in order that the United States may be able to kill a greater quantity on land. It would be most unreasonable, it would be most unjust, it would be most unfair, having regard to the basis upon which we are arguing this question of Regulations; and, therefore, I submit that "necessary" must mean necessary upon the assumption that proper Regulations are in force and are enjoined upon the Islands in order to prevent an undue and improper killing of seals there. In that conection, I shall have to consider this question; Aye or no, it is true that the decrease, such as it is, is due to the action of pelagic sealing? And, in that respect, I shall have to call attention to the facts which, of course, must be expanded more at length to show that now you have the whole facts before you, if you look at what is the real condition of the rookeries upon the Islands and on the number of males that have been killed, the size of the skins that have been taken, you can see quite plainly from the year 1879 or 1880 downwards the rookeries upon these Islands have been in a gradually waning condition; and that the contention that the observed decrease in the years 1884 to 1890 is due to pelagic sealing will not stand the investigation of facts now that we have the facts before us.

Sir, the enunciation of those questions may have seemed a little long. On the other hand, it will enable you to follow the evidence to which I propose to keep closely in each case and will, I trust, show the Tribunal that in considering the scheme of Regulations I shall be able to touch on a particular subject and then to pass from it. Further I have to regard this case as a whole from the point of view of considering what Regulations are really fair.

That is to say not from the point of view of asking you to give any undue privilege or protection to pelagic sealing, but that you may by regulation make a suggestion that will prevent any undue or unnecessary slaughter of the lives of those animals which it is so necessary to preserve.

The Tribunal then adjourned till Wednesday, the 14th instant, at 11,30.

THIRTY-EIGHTH DAY, JUNE 14TH, 1893.

Sir RICHARD WEBSTER.—Mr. President, I proceed at once to the examination of the evidence on the various subjects which I enumerated at the close of the sitting yesterday afternoon. The task of the British Counsel has not been rendered lighter by the action taken by my learned friends on the other side. We always had a hope that there might have been a certain amount of approximation and fair discussion between us as to what I may call the limits of Regulations; but you will have observed, from the paper read some days ago by General Foster, to which paper allusion was made by the Attorney General yesterday and which called forth a remark from Mr. Phelps, I have to justify the whole of my Regulations. It is not a question of degree; they are objected to root and branch by the United States, who contend that an exclusive right is to be given to them of capturing these seals, and that, within the whole of this area, no Regulations are at all compatible with the duty imposed on this Tribunal by the Treaty.

Sir, you will not have forgotten the scheme of the Treaty is that, for the guidance of the Tribunal, there shall be presented to them a joint and several, Report of the Commissioners, both of the United States and Great Britain; and in dealing with the various heads to which I have to direct your attention, I must, of course, in every case see that I bring before you, inasmuch as it has not been already brought before you, the contents of the various Reports upon each of these points, supplemented of course, by the evidence which the two countries have laid before the Tribunal. The first question I propose to address myself to is, what is the zone of thick seal-life as I shall contend upon the evidence taken fairly as a whole and disregarding exceptional statements? The thick seal-life is to be found within a comparatively speaking, narrow belt round the Pribilof Islands; outside a narrow belt of somewhere about 20 miles, seal-life is sparse, seals are scattered, and attacks made on seal life would not impair or injure what I may call the main seal herd.

In considering all this evidence, Mr. President, you will have to remember that it has not been subjected to cross-examination. I shall have to point that observation later on when I deal with specific statements upon which cross-examination was attempted and not permitted.

It is very important in reference to the statements on which reliance is placed on one side and the other. The Tribunal will be good enough to bear that in mind and further as to these observations I ask particular attention. It is important to see if the statements made are *ex post facto* that is to say after the discussion has arisen or if they are statements made before the actual contention between the parties had been developed. In that view may I ask the Tribunal kindly to take the British Commissioners' Report and to refer to certain paragraphs beginning at paragraph 209. I do not pause to repeat, but only to endorse with a word my learned friend the Attorney General's argument with regard to the attack made on the British Commissioners. I may have to refer to it later on. It has been a matter of astonishment

and regret to me that such passages as I shall have to read will be found in the United States papers. I will only appeal to the fair judgment of every member of this Tribunal, as I read this, as to whether on every point this Report is not only fair but impartial and giving the authority on for and against every statement whether it tells in favour of the supposed view of the Commissioners or against it. Then paragraph 209 is in these words:

The distribution and mode of concurrence of the fur-seals at sea when congregated in their winter habitats on the two sides of the North Pacific, and while migrating, have already been noticed. While the information on these points is not as complete as could be wished, it is sufficient to show in a general way how the fur-seal is affected in its movements by currents, drift, and winds. In speaking of its food and feeding habits on a subsequent page, it further becomes apparent in what manner the seals congregate and travel in following certain food fishes. It appears to be rather in consequence of such circumstances, operating conjointly upon these pelagic animals, than to any ruling gregarious tendencies while at sea that they become collected into "schools" or groups of greater or less dimensions. This at least is the result of the examinations made during the summer of 1891 in Behring Sea, where, though two or three seals were often seen actually in company, and occasionally as many as six or eight, the general rule seemed to be that each seal was pursuing its own course, travelling, sleeping, feeding, or sporting in the water, without reference to others in the vicinity. This is clearly shown by the observation that even when passing through an area at sea in which seals would be noted as abundant, they are as a matter of fact usually separated by distances much too great to enable any single animal, or any group of two or three individuals, to be in any way cognizant of the presence of the next adjacent individual or similar group.

I should point out the remarkable corroboration of this presently when I call attention to the United States evidence:

Apart from seals met with near the shores of the breeding islands, the densest "school" found by us was on one occasion about five miles to the westward of the land of St. Paul Island, where about forty seals were counted in a distance run of two miles. In all other cases, it was exceptional to meet with seals to the number of four to a mile run, while two to a mile run was much above the average even when passing through areas of abundance. It is thus evident that the seals had been brought together in such areas of abundance by reason of common conditions rather than by their own volition.

Then follow some paragraphs which give some very important statements as to the sources of information, but are not sufficiently material for me to read. I will now direct your attention to paragraph 214:

214. Without attempting to enter into further details here as to the methods employed, the general results arrived at may now be briefly described:

It is evident, in the first place, that the seals are most abundant in the water in the immediate vicinity of the shores of the breeding islands, this abundance of seals extending often not more than half-a-mile from the fronts of the breeding grounds, and seldom for 3 or 4 miles in such a way as to be at all notable. In the case of the Pribylof Islands, it is also observed that seals were numerous in both the monthly periods in the tract included in a general way between St. Paul and St. George Islands, though they differed much in this respect even at nearly approximate dates. It is further clearly shown that the Pribylof and Commander groups form the main centres of abundance of seals in Behring Sea during the summer; but that while this is undoubtedly the case, the seals are not found to decrease in numbers with any approximation to regularity in zones concentric with the islands,—always excluding the seals in the immediate neighbourhood of the shores.

215. It is therefore not possible to outline a series of zones in which the number of seals present will bear an inverse ratio to the distance from the islands. It is, however, possible to draw an approximate limit for a region about the Pribilof group, which will roughly define the area of abundant seals at sea during each of the two monthly periods chosen. In the case of the region about the Commander Islands, data though almost wanting for the first monthly period, and but scanty for the second, are sufficient to indicate a general mode of distribution similar to that demonstrable in the first case. Within the areas of abundant seals, these animals are, however, by no means regularly distributed, even at any particular fixed date, but are scattered in irregular patches in the diffuse character already described, and are very often thickest locally towards the outer limits of the area.

316. Beyond these areas, seals are found more or less sparsely scattered over a great part of Behring Sea.

I call attention particularly to this Mr. President.

Which in the first period extends, in the longitude of the Pribilof Islands, from the Aleutian chain northward to about the 59th degree of latitude, includes the whole vicinity of the western Aleutian Islands, and spreads again to a greater width with the Commander Islands as a centre.

217. In 1891 the area of abundant seals about the Pribilof Islands appeared to be not only changed in form, but considerably reduced in size in the second monthly period; while that of scattered seals was not only changed in form, but much enlarged in area.

That would be a natural consequence, Mr. President, of more seals having occasion to resort to the islands—you would expect to find after the period of their visit to the islands became practically finished, more seals out in the scattered regions further away.

It appears, that in most years, in the later summer this area of scattered seals extends to the north-east of the Commander Islands, quite to, or even beyond, the 60th parallel of north latitude. This particular extension is probably to be explained by the drift of that branch of the Japan current which flows through the western part of Behring Sea, assisted by the prevailing southerly winds in the same part of the sea in June and July; while the comparatively restricted spread in a northward direction in the eastern part of the sea may be similarly connected with the general movement of the water from north to south in that region.

Then you may pass the next two paragraphs which bear upon great detailed observations which support their statement, and I wish to read paragraphs 220 and 221.

220. An examination of the area surrounding the Pribilof Islands in which seals were abundant in 1891, together with such other facts bearing on former years as could be obtained from pelagic sealers, indicates that the maximum limit to which this area may reach from the islands in the summer months in any direction is not more than about 180 miles, and it is probable that similar conditions obtain with regard to the Commander Islands.

221. Respecting the number of fur-seals to be found at sea within the areas of abundance above referred to, and exclusive of those frequenting the islands and their immediate shores, it is difficult to attain to anything like certain results. The endeavour has been made, however, in a tentative way to reach some roughly approximate estimates, by finding the number of seals actually seen in measured lengths of runs in or across such areas, chosen as typical, and made at different times in both monthly periods. The results obtained varied somewhat widely, as might be expected, not alone in consequence of the actual difference in density of the seals, but also from circumstances connected with the weather and the state of the sea surface. The observations made were, however, combined in a general average, which, when thus treated, showed about one seal noted to each mile run. On the assumption (which cannot be very far from the fact) that on the average a width of half-a-mile was efficiently scanned from the deck, this would give a mean of two fur-seals to each square mile of Sea surface within the area referred to.

I will ask the Tribunal not to overlook that statement when I come to the corroborative testimony which I shall submit from the United States affidavits. I need read no more there at present, but I will ask you to turn to paragraph 313 page 56 where occurs a statement to which I shall direct attention.

313. So far as the facts actually observed in 1891 go, it is apparent that there is always a considerable number of seals swimming, playing at sea opposite each of the rookery grounds, and that these in August consist largely of females, while in September great numbers of pups are to be found in addition. When extensive kelp beds exist off the rookeries, the main body of seals is generally seen inside the kelp, and at a distance of half-a-mile or so from shore comparatively few seals are seen; while at two or three miles seaward from the rookery there is no notable abundance of seals, and if sailing round the breeding islands, in a fog, at a distance of four miles from the shore, it would be difficult for the closest observer (apart from other indications) to decide when he had passed abreast of a rookery.

I am not now upon the question of the distance which females go specially—I will take that separately; but I refer to the general body of seals.

Now, the Court will remember that the original contention of the United States accorded with our own. I am not at all suggesting that my learned friends are not fully entitled to the argument that they did not know, or Mr. Blaine, when he wrote, did not know, as much as we know now. I am myself going to use that argument in favour of some of my contentions; it is equally open to my learned friends. I am entitled, however, to note in passing the original contention in the celebrated letter from Mr. Blaine to Sir Julian Pauncefote, the actual passage being at page 284 of the first volume of the United States Appendix,—the date was the 17th of December, 1890,—in which you will remember the President asked the Government:

To agree to the distance of 20 marine leagues—within which no ship shall hover around the islands of St. Paul and St. George, from the 15th of May to the 15th of October of each year. This will prove an effective mode of preserving the seal fisheries for the use of the civilized world.

Sir, in my submission, having regard to the evidence that we now have a distance of 60 miles, or 20 marine leagues, is very excessive; but it is to be noticed that that distance was in connection with the dates there mentioned, from the 30th of May to the 15th of September, and would have left Behring Sea outside that 60 miles open during the whole year; and in connection with what I am going to press upon this Tribunal (for I ask to be allowed here again to make the observation), I shall submit to the Tribunal that I am considering this question of Regulations fairly from the point of view of assisting the Tribunal and not trying to argue it too much from the British point of view, and I say it is important to stop pelagic sealing in Behring Sea while the stream of gravid females is going from Unimak pass up to the islands. I mention that because it is quite clear, from that point of view, that Mr. Blaine had not sufficient knowledge. I agree that that scheme of his would have allowed pelagic sealing in Behring Sea in the months of May and June north of the Aleutian Islands, and up to within 60 miles of the Pribilof Islands; and I admit at once, so far as Counsel may make an admission, looking at it impartially, that is a period of time when in Behring Sea the most destruction would be done to gravid females. I speak of Behring Sea as compared with outside Behring Sea, because, from about the middle of May up till the 15th of June, the female seals in large crowds, clustered together, are streaming up from the Unimak pass and other passes close by to the Pribilof Islands.

Therefore, I call attention to this, and I think the Tribunal will think I am not unfairly admitting it, that the zone proposed by Mr. Blaine, which he thought to be effective, did overlook or was insufficient from an important point of view, and that the rights of pelagic sealers ought to be restricted, so as to prevent any pelagic sealing in Behring Sea when the herd of females close together are, to use an expression I used just now, streaming up in close proximity towards the Pribilof Islands. I may make this observation once and for all, and submit this to the Tribunal, in the Pacific Ocean, and even round the coasts of the Gulf of Alaska, the stream has a comparatively speaking wide area, speaking of the stream of seals—that is to say it is dispersed from 3, 4, 5, 6, or even 20 miles from the shore; that is the evidence, and I believe even further. But when the seals get to pass through the Aleutian Islands they might become pressed, be closer together, because the passage through which they go is narrow, and people thought, even at those places, nets put round might catch and destroy a very large proportion of the female seals. So a point to be considered by this Tribunal, and considered I admit most carefully, is to see that during the time that

the congested herd of female seals, or the congested body of female seals, is passing through the Unimak and other passes up to the Pribilof Islands they should be, practically speaking, free from attack.

Now, having reminded you, Mr. President, of what the view of the Commissioners was, put down impartially and fairly, not as an admission forced from unwilling witnesses, let me in a very few sentences remind you of how the United States evidence stands. I must go over somewhat the same ground as was referred to yesterday in order to supplement it a little. Will you take map 4 of the United States Case. That is the sealing chart of the year 1891. How do the United States advisers describe the condition of sealing area in the year 1891? You will find that they have drawn again two imaginary circles round the Pribilof Islands at a distance of 20 miles from the nearest land. The Attorney General was not quite accurate in saying it would be more than 20 miles in some places. That is not the condition. It would be always 20 miles from the nearest land, and therefore more from other pieces of land. It is a zone enclosing the distance between St. George and St. Paul, you will see, because, being 36 miles apart, those two circles would overlap. How do they describe that? "Seals within this area very numerous". That is the statement made in the United States Case for the purpose of showing what was the condition of things in 1891.

Now I will tell the Tribunal what this map shows. It has been used in the United States Argument and in the evidence of the United States witnesses as though outside that 20 miles it showed the sea very thick with seals. On the contrary, it shows the reverse.

The total observations of six cruisers from the 15th July till the 15th September (that is to say, at various times between that), put down the total number, I have no doubt quite fairly, giving the dates and numbers, is 615 seals.

The total area over which those seals are spread is 100,000 square miles. Now do not let me be misunderstood. It is quite possible that on other days, or on the same day in other parts of these 100,000 square miles there would be seals, comparatively speaking, sparse or frequent, as you choose to call it, to the same extent. But it points to this, that the observation, assuming it, as I do, to have been fairly taken, shows that outside the radius of 20 miles from these Islands the seals are, comparatively speaking, sparse, and further than that, that they are existing in the condition, so far as thickness is concerned, where you would expect to find them, if they were, as the evidence leads you to believe, not in the course of actually migrating or going to or coming from the Islands themselves. In other words, as it is described by those who have made these affidavits, and compiled the evidence and described them as being seen in one direction sometimes and sometimes in another, and sometimes sleeping and sometimes not, and evidence in the condition in which seals would be, treating this part of the sea as that part of the universe they were inhabiting, if that is a proper expression to use with regard to seals in such a condition. I only pause, before I leave this map again to remind you of how misleading the appearance to the eye would be when you remember the extraordinary small scale on which this map is. I do not make the slightest complaint, and I shall not be mistaken, but it is a fact that each one of these seals covers from a mile and a half to two miles space on the water and therefore does not represent what would be the physical appearance of the seals in the sea itself.

Now I ask the Court to take the map N° 6 of the Counter Case which is the corresponding map of 1892 which my learned friend the Attorney General referred to yesterday.

That is important, because a good deal more information is given in connexion with the year 1892 than is given in connexion with 1891, which information I desire to put before the Court in a compendious shape. In 1891, no doubt, not seeing the importance of the matter so much, they either did not keep the logs or they have not given us the logs. I merely mean that we have not the same amount of information for 1891 that we have for 1892. In 1892 they have given us the logs, I think, of all the six or seven cruisers that were engaged.

Now the state of things is this, and it bears, I shall respectfully submit, upon the very important corroboration, of the British Commissioners' view. Six cruisers were engaged for 148 days; that is to say combined, the total days occupied in examination was 148, ranging between the 20th July and the 31st August, some more and some less, amounting altogether to an average of something like 35 or 36 days observations each. All the logs are given, and one, the "Corwin" gives the number of seals they observed in all cases. The "Corwin" in one or two instances—a few outside and a greater number inside the 20 mile radius, says that in certain instances the seals were too numerous to be counted.

It is not quite possible to give an exhaustive statement with regard to this, but this is what the map shows and what the logs show. In the first place, will the Tribunal kindly observe again the 20 mile radius or zone, which is a little more accurately drawn upon this map than upon the other but sufficiently for our purpose corresponding with that of 1891 and the words are written "Seals within this area very numerous". Then occur, Mr. President, the pictorial representations of the other observations extending, as you will notice over a considerable area of sea, and I perhaps cannot point my observation more than by telling you that the map has been correctly made from the logs.

On the 20th July, almost due south-east of the Pribilof Islands, you will find 102 seals in a large cluster, and there are 102 in that bunch when it is counted it is correctly put down, and they cover an area, as nearly as possible, as well as you can check it of 400 square miles. If it is a picture of what was seen the 102 seals would, in fact, cover a space which would be perhaps three or four acres at the very outside they would not cover it, but be in it. The map shows as though they covered a large area. That is perfectly fair, but I want to remove any false impression. This map and the log show this, that during all this time with a number of cruisers in and out, as was shown yesterday—and I need not bring it to your attention again—the total observations outside the 20 mile radius were 1062 seals; the total observations counted inside and outside were 1859, and then within the 20 mile radius there is "thickly populated, very numerous". They very naturally and very properly not only did not attempt to count, but could not because they were so very numerous. The area is nearly as large as the map of 1891 covers, and even of the observed and counted seals 40 per cent are found within the 20 mile radius; but when you remember this area is spreading out and by geometrical progression getting larger and larger.

The PRESIDENT.—The seals within the 20 miles radius are not taken from the map, but from observation.

Sir RICHARD WEBSTER.—The difference between 1062 and 1859 or about 600 seals is taken from the logs, that is to say, in addition to the

outside 1062 there are other instances of seals actually counted inside the 20 miles which brings it up to the 1859, the total number, that is, independently of the densely thick seals which they did not attempt to count inside close up to the Islands.

I therefore respectfully submit to this Tribunal asking them to remember that these observations are addressed to them for their assistance and not for the purpose of endeavoring to produce an unfair or distorted impression upon the mind of the court—I say that this evidence points to the strongest corroboration of the British Commissioners' judgment that there was a fairly defined area—it may be 20 miles, it may be 15 miles, it may be 30 miles for all I care—I dare say it also varies with the weather, and with the fish and with other incidents connected with seal life, but there is a certain defined area within the immediate proximity of the Pribilof Islands at the time that the Pribilof Islands are densely crowded with seal life—outside that there is a sparse distribution of seals which are not in attendance upon the Islands but which are seals for reasons which I may have reason to examine inhabiting the sea, passing through the sea, and to be found from time to time under such circumstances that they can be occasionally captured by the sealer.

The PRESIDENT.—I suppose the information you have given us in part concerning the Russian Islands tends to show that the general circumstances of seal life on the Commander Islands is the same.

Sir RICHARD WEBSTER.—The information we have obtained—I shall have to refer to it later on—from the Commander Islands is the same, that under ordinary circumstances the seals do not go far from the Commander Islands—it might be 10 miles it might be 15 miles, it may be 20 miles, and that a zone of 30 miles suggested by the Russians, for a special reason which does not apply to Pribilof Islands, as I shall show later on, is certainly an outside distance. But I address these observations to the Court in order that they may understand upon our own independent investigation, quite apart from that which has been subsequently discovered in regard to this matter, these are the considerations that the Court ought to take in view when they decide what are the limits to be put upon a legitimate industry in order that it may not be curtailed further than is necessary for a proper protection of the life of the animals which are the subject of consideration.

The PRESIDENT.—Have you any information as to the proportion of the Commander Island seals to the Pribilof Island seals. Is the Russian herd larger or smaller.

Sir RICHARD WEBSTER.—Smaller.

The PRESIDENT.—Do you know the proportions.

Sir RICHARD WEBSTER.—Yes, I can tell pretty well. In an ordinary year the Russians think they ought to kill 56,000 to 57,000 seals on the island. In an ordinary year the United States contend, and I dare say rightly they kill 100,000. My case is 100,000 is very much too large, but I should think in all probability the correction of it would not bring it down so low as the Russian. I think the evidence is as to the Commander Island group or family, that the number of seals of the Pribilof Islands is larger.

The PRESIDENT.—Comprising Robben Reef, or is that a separate flock.

Sir RICHARD WEBSTER.—I was speaking of it as a whole, but if I am wrong it will not be taken against me.

Mr. PHELPS.—I observe that the last two years before the *modus vivendi* the Russians took about 30,000.

Sir RICHARD WEBSTER.—I think the evidence read yesterday was they used to take 57,000 before the *modus vivendi* and after the *modus vivendi* it had fallen to 35,000 and 33,000. That is my recollection.

Mr. Justice HARLAN.—Which *modus vivendi.*

Sir RICHARD WEBSTER.—Of 1891, 1892. I do not complain of the interruption. On the contrary, if at any time Mr. Phelps thinks I am wrong or wishes to correct an error I am personally obliged to him, for he once said, Mr. President, in a speech which is classic and historic and which will never be forgotten by any one who heard it that a man who never makes a mistake, never makes anything, and I desire to say nobody is more conscious than I in addressing an argument of this kind, that it is impossible to avoid mistakes and if I by ignorance or want of recollection, make a statement which my learned friend thinks to be so inaccurate that he desires to correct it, I am personally obliged to him for calling attention to it. The figures I had in my mind were taken from the Russian correspondence and I thought I was right.

In the years 1889 and 1890 before the establishment of the Anglo-American *modus vivendi* the catch amounted to 55,915 and 56,833; while for the years 1891 and 1892 after the above mentioned agreement the figures fell to 30,689 and 31,315.

Therefore apparently assuming the Commander and Robben Islands to be affected by pelagic sealing, between 50,000 and 60,000 is what the Russians seemed to consider their normal yield.

Having called attention, Mr. President, to the maps of the United States I am going to ask you kindly to unfold Maps 3 and 4 annexed to the British commissioners' Report. There is a preliminary observation which ought to be made. You will remember prior to these Commissioners' Reports very little indeed about the seals at sea was known; something, a good deal, was known about the seals upon the Islands, but the British commissioners and the United States commissioners have added considerably—particularly the British Commissioners—to the knowledge of the world with regard to the seals at sea. You will find Map 3 shows approximately, according to the opinion of the British Commissioners the area frequented by fur-seals in the period extending from July 15 to August 16. The darker coloured area is characterised by abundant seals and the lighter area is characterised by scattered seals. You will notice that the commissioners drew the distinction rather differently between what I may call abundant seals and scattered seals. It is a little difficult to follow that area—it is rather larger in some respects. It looks to me in some cases to go out as far. I should think, as 60 or 70 miles, or even further on the north-east, but judging from the distance, from the Pribilof Islands, it would seem to me to go some where about half way to Unalaska.

General FOSTER.—That is 195 miles.

Sir RICHARD WEBSTER.—I have stated the distance from the Pribilof Islands which is 182. You take 195—I do not care which it is, I do not suggest that these gentlemen are absolutely accurate. They would be the last to wish that I should make any allegation of that kind. They are attacked in the United States Counter Case for having suggested that the seals are found scattered over the sea practically continuously—although of course in sparse numbers—from the Pribilofs to the Commanders. I will call attention to that very shortly, and we will see on which side the truth lies in that respect. This Map N° 4 gives a similar sort of area for the Commanders. I remember the British Commissioners did not visit the Commanders till later in the season. If you turn to Map 4, you will find a general distribution of seals over Behring Sea, an opinion more than supported, proved, by the

evidence now before the Court, and a rough idea of what they thought to be the comparatively speaking dense area.

But, Mr. President, of course, we must define terms before we use them, and it is quite evident from reading the Report that the United States authorities when they speak of these 20 miles about the islands characterized by, very numerous seals so numerous they could not be counted, were not speaking of the same kind of distribution as that which extends all over the thicker part of the British Commissioners' colour. That appears from the British Commissioners' Report itself.

Now, it may be said that I do not correctly interpret the United States Map; and, therefore, I should like to read one passage of very great significance from the United States evidence in regard to this matter. Will you, Sir, be good enough to take the United States Counter Case, and let me read you a passage on page 235? What I have been trying to give the Tribunal, in the hopes of assisting them, is the effect of reading and boiling down these logs, reports and affidavits and to give it to you as shortly as possible; but there is one passage on page 235, which is deserving of special notice. Cap. Coulson was in charge of, I think, the "Rush" and he took his instructions from the "Albatros", and I may tell you, Mr. President that he cruized from South-south-east to North-north-east, that is to say, to the eastward of the Pribilof Islands principally. He says:

At every station where the vessel was stopped, codfish was taken; in some localities they were abundant, at others only a few were caught.

During the month and while prosecuting the work, the vessel has cruised nearly three thousand miles, and in the whole time not one vessel engaged in taking seals has been seen. The weather, as will be noticed by the Seal Log, has been unfavorable for sealing a greater part of the time, added to this the scarcity of seals on the Eastern side of the Pribilof Islands will account for the small number of seals observed or taken and the little information gathered.

On nearly every point of the compass on which the lines were run and the seal herd, or what might be termed numerous seals, were passed at ten miles.——

that means ten miles from the islands,——

And the numbers decreased rapidly, so that at forty miles few seals were seen, and at fifty, on most all of the courses, no signs of seals were seen. The exception to this rule was in one or two of the Northern and North Eastern lines, where seals were met in small numbers, one hundred miles away from St. Paul Island; these were apparently feeding on some surface food, as large flocks of whale birds, and in one instance a whale, were in the vicinity. Night coming on prevented close observation or investigation.

Therefore, that would show you that, at any rate speaking of the eastern side, the view which I have been expressing to the Tribunal was in substance the conclusion at which Captain Coulson arrived as the result of his investigation. Captain Hooper's affidavit I have already read and criticised; I will only remind you of it, on page 216, where he says that he found, what he calls, numerous seals in certain latitudes at a distance of 300 miles, from which,—

I infer that the western limit of the range of the Pribilof herd of seals is between two and three hundred miles from the Islands.

I criticised that when addressing you on the question of property, and will not refer to it any further at present.

Mr. PHELPS.—The figure 300 is a typographical error, and should be 200.

Sir RICHARD WEBSTER.—Is it 200 in the original Report?

Mr. PHELPS.—General Foster can explain it to you.

General FOSTER.—I gave Mr. Tupper notice of the fact that we would claim that that was an error, that it should be 200 in place of

300, and it is plainly indicated by the context, if you read the whole page. It will show itself when you examine it with the Chart.

Mr. TUPPER.—And I may say that you informed me, as I understood you, that the error, whether it is an error or not, is in the original Report signed by Captain Hooper.

General FOSTER.—Yes, it is a type-written copy.

Sir RICHARD WEBSTER.—Well, my learned friend, Mr. Phelps, having said that it is a typographical error, I of course accept it at once; but I attach so little importance to the actual question of distance, having regard to what the maps themselves show, because the 1,068 seals in the 100,000 square miles include the seals observed by Captain Hooper and all the other cruizers, and we know what he means by numerous seals because every single set of seals he observed outside the 20 mile radius was counted and put down. Therefore, whether it be 200 or 300 for the purpose I am contending for is immaterial, but I think I ought in justice to myself to say that, when I made the argument about the 300 miles the other day, I did not receive the slightest notice from my learned friends of the mistake, nor did I hear of it till some days afterwards, when I immediately made the enquiry to know if it was in the original.

Lord HANNEN.—I think, if you look at the paragraph, General Foster's observation is borne out, and I think he is correct, because it speaks of a 200 mile zone "dividing that part of the sea over which the "Corwin" cruised into zones" up to 200 miles, and he says, "I find the percentage of seals", and so on.

Sir RICHARD WEBSTER.—I had not examined it from that point of view, my Lord, I was only looking at the statement with reference to the supposed absence of intermingling when I made my last reference to it.

Now the main point of attack made on the British Commissioners is because they have stated, as the result of their own observations, taken during their own cruising, that the seals did extend sparsely, practically speaking, all the way across Behring Sea. Now if I was entitled, and if I desired simply to incorporate, as part of my argument, the mere statement in the Commissioners' Supplemental Report, I should from their own investigations prove that they did in fact see seals right away across; but I prefer to take another course, and I will ask the Tribunal kindly to turn to Volume 2 of the Appendix to the British Counter Case, pages 23 to 27, where they will find a very convenient abstract of the affidavits which bear upon this matter. I will only pick out those (there are some 57 of them, and I will not trouble the Tribunal with the whole of them) that bear directly on this question of seals in Behring Sea. If you will look at the top of page 24, it is a verbatim extract of Mr. Billard's affidavit given later on in the book, page 56:

Last year the "Beatrice" crossed Behring Sea from east to west, starting from about 35 miles north of St. Paul Island. I saw seals all the way over to the Copper Island grounds and got two seals on 27th July between American and Russian sides of the Sea.

Mr. Bragg, the next man, also on page 56.

In the year 1887 I went over to Copper Island on the schooner "Teresa" and I saw seals in Behring Sea all the way across.

And if you go to the top of page 25, George French his affidavits are at pages 44 and 46, but I read from the summary on page 25.

Last year, 1891, when the "City of San Diego" was crossing Behring Sea from Amutka Pass to Copper Island, we passed small bands and bunches of seals travelling rapidly north-easterly. This took place on three different days. The last lot we met were about 150 miles from the Copper Islands. I am fully satisfied they were crossing Behring Sea to the Pribilof Islands. This was between the 5th and the 12th July 1891.

Then De Witt, the next but one:

I have been over to the Copper Island grounds twice, in 1891 and 1892. In 1891 the "Viva" crossed Behring Sea from about 20 miles north of Amutka Pass to the Copper Island grounds. I saw seals scattered all the way over. This year the "Sea Lion" went over outside the Aleutian Islands. I saw seals in about the same way all the way over.

Then Captain Charles Campbell:

I went over to the Asiatic side of Behring Sea last year and this year, last year through Behring Sea, this year outside. Last year we saw seals on the way across whenever the weather was fine. There was no way of telling when we saw the last of the seals that frequent the Pribilof Islands, and met the first of those that were going to the Commander Islands.

Then Thomas Brown:

Last year and this year I hunted on the Asiatic side of Behring Sea in the summer. On the way across last year through "the Sea" we saw seals whenever it was fine, and got some, and this year we saw some seals south of the Aleutian Islands as we went across.

I need not read more of these, and I come a little lower down to.
Captain James W. Jood.

In September last [on "Enterprise"], on my voyage home from the Asiatic side, I saw seals in mid-ocean 200 miles east-south-east of Attu Island.

That is south of the Aleutians, and I need not have read that.

When ordered out [of Behring Sea] in 1891, I was about 30 miles northward of Unimak Pass. I at once sailed across the sea westward to the Copper Island grounds, following a course along the 55th parallel north latitude. I saw seals all the way across to the Commander Islands. Some of the seals were sleeping, others travelling, some east, some west, most of them going east.

Then if you will turn over to page 26.
Maurice Edwards.

I went over to the Russian side of Behring Sea last year [1891], and I saw a few scattered seals all the way across.

Then the 4th, turn down:
William Edwards.

Last year [1891] I went over to the Russian side of Behring Sea; we saw a few seals all the way across.

The next man, Captain Thomas O'Leary:

I went across to the Russian side of the Behring Sea last year [1891]. We found a few seals nearly all the way across.

Then George Wester.

In travelling from the American to the Asiatic side of Behring Sea from the middle of June to the middle of July, I have seen seals all the way across on fine days.

And then on the next page, last but two, captain Andrea McKiel says that:

In 1891, the "Maud S", after being warned, sailed across Behring Sea in nearly a direct line between the Pribilof Islands and the Commander Islands. I saw seals every day on the voyage over.

Then the next voyage, is passing south. I need not refer to that. Mr. Macoun, when sailing across the Behring Sea in the year 1892 (I read from his Report at page 138 of the first volume of the Appendix to the Counter Case) says:

On the return trip to St. Paul Island we again encountered such bad weather that no look-out could be kept for seals. While the ship was laid to, between noon and 5 *p. m.* on the 9th of September, many fur-seals were, however, seen swimming about in all directions. The ship's position at noon that day was latitude 58° 58′, longitude 177° 8′ west, about 240 miles from St. Paul Island.

I will not stop to argue whether it is to be presumed that those seals found swimming about there are to be considered as being all female seals and each having a pup on the Islands that would perish if those seals were slaughtered.

I have pointed those out not for the purpose of dealing with general intermingling, not for the purpose of calling attention to the body of evidence to which I alluded when I was addressing you on the question of property. You will remember, however, Mr. President, what the claim of the United States is,—down to this line 35 and everything east of that place where I have left the pointer on the map, longitude 180, is claimed by them to be United States property, under regulations, so that no British vessel can catch or hunt seals there at all. I want to know on what evidence my learned friends are going to suggest that both in the Pacific Ocean south of the Aleutian Islands, and in the Pacific Ocean north of the Aleutian Islands, that is to say in Behring Sea, seals which on the evidence I shall submit to you are proved to be scattered across in that sparse kind of way, and having no direct connection with the Pribilof Islands at the time that they are so scattered, are to be regarded for this purpose as being the exclusive property of the United States, so that the British sealer, and I suppose, somehow or other, the sealers of other nations, are not to be allowed to kill them at all, at any time within those very wide limits to which reference has already been made.

I ought to mention in connection with the subject I have just left, that the United States Commissioners' Report gives us no statement or information upon which we can draw any conclusion as to what is the breadth or width of the populous zone, for reasons which I suppose are satisfactory to themselves. They have not thought fit to investigate that matter at all.

Now, I claim, Mr. President, to have established, upon the United States evidence as well as upon the British evidence, that the zone of sea thickly populated by seals in immediate proximity to the Pribilof Islands at a distance which may be taken roughly at 20 miles; but for my purpose I care not if you consider, on a review of the evidence, it is 15, 25 or 30,—it is immediately round these islands. My learned friends endeavour to meet us in another way. They say, or rather they would say if they would bring their minds to bear on Regulations properly so-called,—That may be perfectly true, but we say that outside that 30 miles there is a certain number of seals,—we say a large number of female seals, feeding or desirous of getting food, and these seals are caught by pelagic sealers in such a condition and at such a time that the life or death of the young upon the Islands is involved in their life or death.

Now, I was about to consider this question of the females feeding, and the time during which they feed, and the distance to which they go. It is impossible for me to make any assumption as to what my learned friends may ultimately concede in arguing, but I do not propose to go over the evidence in support of the two statements made by the Attorney General yesterday with regard to the male seals, unless I had an intimation that it was going to be seriously disputed. The first is, that the bulls do not feed at all during the time that they are on the Islands; secondly, that, on the United States evidence, the "hollus-

chickie", or bachelor seals, though out of the water from periods of from 4 to 6 weeks, or even longer, practically speaking do not feed at all. I am prepared to establish both those propositions from the United States evidence alone; but I want to consider whether, on general considerations, it is not highly probable that that which the evidence supports will be the fact. Nobody suggests the individual male seal knows that it is going to be killed at a certain age, or it would try to enjoy life as much as it could during the time that it was going to be allowed to live.

Nobody suggests, for instance, that "holluschickie" at 3 years old know they are going to be knocked on the head at 4 years old; or that "holluschickie" at 4 years old know they are going to be knocked on the head at 5. We know when they come into a proper condition to be bulls 6, 7, or 8 years old, or possibly a little younger, they do fast for these extraordinary periods of from 2 to 3 months. I should have thought that if a seal is going in the year 1890 to fast for 2 months and performing the functions you know of during that period, it is very improbable that it will have eaten for every week of its life, or every day of its life in the previous years of its existence. You would expect from natural laws that if a seal has to go through that state of things and that ordeal, the natural course of its training would be that in these earlier years it will be in a condition to go without food, at any rate after it has grown up, during that time until it is out upon the Island, speaking of the substantial part of the time.

Now, we come to the females; and we start, as I shall show you presently, with this statement (I am aware that I must not treat it as an admission after what was stated), that for a considerable time, and I think the lowest at which it can be fairly put upon the evidence is a period of from 3 to 4 weeks, the female, after giving birth to the young, does not go out to feed at all. Now, I propose to pursue exactly the same course, Mr. President, and to call your attention to such paragraphs of the British Commissioners' Report upon this matter as have not already yet been called to your attention.

Now on page 54 at paragraphs 303 to 308, read by me yesterday when the Attorney General was arguing on this matter, you will find the conclusion of the British Commissioners with regard to the feeding of the female seal, which conclusion is, according to the judgment of the British Commissioners, that until the time when the pup-seals are beginning to take care of themselves the female seal, though it goes into the water, does not go out to feed. It is based upon facts—when I say "facts", upon information, the value of which the Court was able to appreciate when I read it yesterday, and I do not propose to read it again. Now let us see what further evidence there is upon that particular matter. Now I call attention, at once, to a statement made in an Affidavit of Mr. Stanley-Brown, and as this is the first occasion upon which I have had to refer to the evidence of Mr. Stanley-Brown, I wish to say a word or two which will be taken to apply to all the observations on his evidence and to him, which I make. It is no part of my duty, and much less of my intention, to attack the evidence of Mr. Stanley-Brown on any particular point in so far as it depends upon matters which he saw or observed himself. I believe him to be a gentleman who certainly would not intentionally make any statement he did not believe to be true; but in critcising Mr. Stanley-Brown's opinion the Court must remember this fact: That until the year 1891, when he went to the islands, he had never studied seal life at all, and never had been any where near the Pribilof Islands or taken any part in the investigation. I mention that and I shall have to point my observation again when I come to remind

the Tribunal of what has been the conduct of the United States Government in connection with the information they have obtained—that although there were at their disposal five or six competent gentlemen who had been in an independent position and had previous experience of the existing, state of things on the Pribilof Islands, and therefore whose opinion would have been extremely valuable inasmuch as they would not be forming conclusions for the first time, but would be bringing their opinions to bear on the changed state of circumstances—the United States, in the exercise of their discretion, thought fit to send, in the years 1891 and 1892—1891 particularly—to the Islands, Mr. Stanley-Brown, who while his powers of observation were, I will assume, equal to those of anyone and his intention to record accurately surpassed by nobody, on the other hand it is obvious from a perusal of his affidavits, that he spoke in ignorance and in inexperience of what had been known before of the habits of these seals, and to a large extent was forming opinions and drawing conclusions which a vast mass of testimony enables one to show are incorrect, or at any rate are not correct to the full extent they are not stated.

Now, Sir, the paragraph to which I was about to refer will be found at page 386 of the United States Counter Case. This is referring, Sir, not to his visit in 1891 but to his visit in 1892. The paragraphs of the affidavit are not numbered, but you will find it is the last paragraph on page 386. He says there:

> I arrived on the island this year a few days after the coming of the first cows, and by selecting a small harem composed of seals the arrival of which I had seen, and giving it daily observation, I was able to satisfy myself that females begin to go into the water from 14 to 17 days after first landing. On first entering the sea they make a straight line for the outer waters, and as far as the eye can follow them they seem still to be travelling.

It is perhaps unfortunate that we were not told what distance that was. We know from other evidence that the sea, at those times is densely crowded when the weather is fine, with seals. Then Mr. Stanley-Brown says:

> The first cows to arrive are the first to depart in search of food;

Of course that is purely inference, whether or not they depart in search of food:

> And by the first week in July the cows are coming and going with such frequency as to be readily seen at any time. The accompanying photograph (taken on July 8, 1892, from the same position as, but one day earlier than, the one last year which faces page 13 of Vol. II of the Case) shows pups the mothers of which are already at sea.

I do not think the photograph will enable you to tell that the pups' mothers are already at sea, but I am quite willing to assume that Mr. Stanley-Brown did see—and I take it from him without a word of criticism—the mother-seals going into the water, and that the conclusion that he draws is that they begin first to go into the water at from fourteen to seventeen days. Whether they first go into the water to feed, or whether they go into the water for purposes of enjoyment, or for other purposes dictated by other instincts, as others have thought with not less experience than Mr. Stanley-Brown, is a matter which one may fairly criticise; but at any rate the furthest that Mr. Stanley-Brown can go, looking at the matter from the point of view that he is entitled to look at it from—namely that of supporting as he fairly wished to support the United States case—is that they go into the water for the first time from 14 to 17 days after they come on shore.

Now I desire to call attention to a gentleman who is equally entitled to be treated in the same way, and will, I have no doubt, be treated by my friend Mr. Phelps with the same fairness as I have treated Mr. Stanley Brown—I mean Mr. Macoun, who also had the opportunity, for a very lengthened time, of observing this matter, and who was also on these islands during the same two years that Mr. Stanley Brown himself was. But I must again be allowed to say that I do not put forward Mr. Macoun as a witness whose opinions are to be taken as of great value based upon previous experience, because he, in the year 1891, went I believe, for the first time, to the Pribilof Islands, and had not been in the position of having previous experience.

Now at page 142 of the 1st volume of the Appendix to the British Counter Case, I call attention to a paragraph that has not yet been read in Mr. Macoun's report. He says:

> Within a few hours after a pup is born it receives its first nourishment from the mother; and for some days, while the mother remains about the harem and the pup is too young to wander far from it, there can be little or no doubt that each mother seal suckles her own young one alone.
>
> It was not until the 1st of July that I first noted pups forming "pods" or small separate herds.

The time of arrival, if I remember rightly, of the mother-seals for the purpose of giving birth to the young is about the 10th or 12th June, so that this would make the pups somewhere about 19 to 21 days old.

> It was not until the 1st July that I first noted pups forming "pods", or small separate herds; every harem was still well defined, but the pups belonging to each had begun to show greater activity, and the older ones had to some extent formed little "pods" a few yards distant from the mother seals. By the 5th July it was noticeable that the pups from adjoining harems had "podded" together between them, while the harems themselves were still, with few exceptions, compact and well defined.
>
> The cows had not yet begun to go to the water. The few wet ones seen upon the rookeries were without exception females that were still carrying their young. The seals on a great many small harems were counted, and it was always found at this time that the pups and cows were in about equal numbers. Within the next week, however, the cows began to go into the water, but not in great numbers. They seemed content to swim about near the shore, and were often seen hauled-out on some flat rock after they had been but a few minutes in the water, and, after scratching themselves for a little while, would plunge again into the sea, swim to shore, and go back to the harem to which they belonged.

Now you will remember, Mr. President, that the observation of Mr. Stanley Brown was that he saw, as he believed, the female seal to be still travelling when he last saw her. Mr. Macoun, also observing for a very considerable length of time, and having many days to devote to this, describes that which is in accordance with the evidence of previous persons of experience in this matter who had written on the subject, and have called attention to the fact that the mother goes into the water, remains in the proximity of the islands, plays about the islands, and comes out again. Then follows a long passage read by Mr. Coudert (I do not intend to read it again—I want to spare the Court as much as I can), with reference to the question of whether a mother suckles her own pup or not. Sir, I am not going to trouble the Tribunal with a lengthened discussion on that point. From natural instinct it would seem to me—I must not do more than submit it to the Tribunal—that in all probability the mother does as a rule, suckle her own pup; but it is by no means uncommon both in domestic, and in wild animals, to find that mothers do allow other of their species to suck, and of course we know it is a means in the case of sheep, and the case of other animals, whereby the young are kept alive before they are able to feed. But in my judgment the point becomes, comparatively speaking immaterial, for this reason—that there is abundant evidence that after about three or

four weeks to five weeks to put it accurately—the pup seals begin to spread all along the shores of the islands for vast distances—distances of a mile, a mile and a half, and even more, and occupy positions in the islands away from the harem to which the female would return if the pup was absolutely dependent upon her; and therefore it seems to me to be comparatively immaterial unless we were in a position to say, (which we are not), that up to a certain time the pup is dependent on the mother and that after a certain time the pup is independent of the mother. Criticising the evidence as fairly as I can, it seems to me that there is no evidence of the pup feeding independently before it is three to four weeks old, and that after that time there is substantial evidence to show that the pup can, to a certain extent, take care of itself; but again I say I think in all probability that with seals as with other animals, the pup will go on sucking the mother much longer than a period of three to four weeks if it gets the chance.

Now at the bottom of page 143 is another passage in Mr. Macoun's report which I wish to read. He says:

I was repeatedly told by agents of the United States Government that whenever females were seen coming from the water they had been out to sea for food. This was manifestly absurd, as when the morning was cold it was apparent that few seals were absent from the rookeries, but if the sun afterwards came out, or the day grew warmer, hundreds of seals would be seen going to the water, and late in the afternoon, or towards evening, as it became cooler, they would return to their respective harems. At such times the water from 100 yards or so in front of the rookery would be black with seals, while further out but few—and sometimes none—were to be seen. Many females were watched from the time they left the harem until they were lost among the multitude of swimming seals. They would slide into the water and roll about with evident enjoyment for a few minutes, and then come out upon some rock; after a short rest they returned again to the water. Though a careful watch was often kept, no cow was ever seen by me to enter the water and swim out to sea.

On the 23rd July, at Lukannon and Ketavie rookeries, more than half the seals were in the water, but careful examination, through field-glasses, of the sea in front of these rookeries, neither showed seals coming towards the land nor going from it.

During the seasons of 1891 and 1892, but more especially in 1892, I spent much time at sea in the vicinity of the seal islands, and during both seasons kept a careful count of the number of seals seen in the water. It was noted in both years that while the seal were very abundant in the immediate vicinity of the rookeries, and few were always to be seen between 2 and 3 miles from the islands, very few were after that to be seen until we had gone a long distance out to sea. It is thus evident that the number of seals going to and from the islands is very small.

On the 11th September, when on H. M. S. "Melpomene" we steamed from North-east Point to the village of St. Paul—a distance of about 11 miles—being never more than 3 miles from the shore, and most of the time much nearer to it, when off North-east Point, Polavina and Reef rookeries, thousands of seals were, with the aid of field.glasses, seen playing in the water near the shore, but very few close to the ship at the distance stated from the land.

I mention that, Mr. President, in order to show you that Mr. Macoun had opportunities of investigation, exercised those opportunities, and has recorded the results of his observation I submit, fairly; and it leads to the natural conclusion, namely, that these female seals would go into the water according to their inclination, especially if the weather was hot, for the purpose of cooling themselves, or for the purposes enjoying the water and then coming out again; whereas the United States asks you to believe that no female seal ever goes into the water except for the purpose of going away and getting food and coming back. It seems to me to be a somewhat extravagant assumption, and I shall ask the Tribunal when they have considered this and the further evidence, to come to the conclusion that the view submitted by Great Britain with regard to this point is not without ample warrant having regard to the evidence which is before the Court.

Lord HANNEN.—The difficulty I feel about this is that there is a great drain on the males; that nature has supplied means of providing for that drain: there is a great drain on the females during the time of nursing, but there is no evidence that nature has supplied them with any additional reserve of fat.

Sir RICHARD WEBSTER.—I do not think it is quite "no evidence" my Lord. I am not sure whether there is any evidence of the emaciation of the females after the period of nursing. I am very much obliged to the Court for indicating any point upon which they think my statement requires further support. I call attention to the fact—it must be only a question of degree—that there must be that drain, *ex concessis* for a considerable time—I say from 14 to 17 days or three weeks. The whole significance of this, my Lord, is, during what period the pup is dependent on the mother. It is not a question of whether or not the female feeds—the question is, whether a female that is killed is one upon whom the life of a pup depends; because there is nothing morally wrong from the point of view.

Lord HANNEN.—We are merely on the natural history point.

Sir RICHARD WEBSTER.—Quite so, there is nothing wrong from the point of view of the killing of a female. All I meant is, the United States argument proceeds on three assumptions, everyone of which I shall submit later on, are unjustifiable. First: that every female seal killed at sea has got a pup on the rookery; secondly: that every female seal killed at sea has already been impregnated so that she is going to produce another seal; and next they boldly state that the pelagic sealer who kills a female seal kills three seals at the same time. I will not of course refer to the passages in Mr. Coudert's speech on that. They appeared to me at the time as being extremely exaggerated. My sole object in examining this is not for the purpose of saying that female seals never feed for any given time, which I can fix, after the birth of the pup, but I submit to the Court that upon the evidence they are not shewn to go out to feed until a time when there is reasonable ground for supposing that the pup is to a great extent independent of the absolute necessity of the supply from its own particular mother or from any mother at all.

Mr. President, it is no part of my case—not the least necessary to my case—to suggest that these females must fast for two months, or anything of the kind. I have understated the period with regard to the males, for it appears to be nearer three months; but however, it is no part of my case to suggest that these females are to be subjected and must be subjected to that draft upon their strength. My whole point is to endeavour that the court may have fairly before them the considerations which bear upon what I may call the necessity for regulations in connection with the preservation of seal life; and I submit that so far as the evidence, apart from mere surmise and apart from mere assumption, is before the Tribunal, it would seem that the period when the pup is absolutely dependent upon the mother is, roughly speaking, from three to four weeks at the outside, and that after that time, whether the mother goes to sea to feed or not is, comparatively speaking, immaterial.

My Lord, with regard to the spreading of the seals out upon the shores upon the islands, I desire to call attention to an extract from Mr. Elliott's Report for 1881. Now, Mr. President, having read this extract, I propose temporarily to make a digression, once and for all, with reference to the way in which I am going to use Mr. Elliott's Reports and the evidence that I think ought to be before you in con-

nection with them. The statement with regard to the seals that I propose to read is at page 40 of Elliott's Report of 1881.

Mr. Justice HARLAN.—The one that was published in 1881?

Sir RICHARD WEBSTER.—Published in 1881 by the United States Government. It is what Mr. Foster called the Tenth Census Report.

Mr. FOSTER.—Prepared upon observations made from 1872 to 1876.

Sir RICHARD WEBSTER.—Very likely so; but this is a republication. It had been previously published, as I shall show in a moment or two, in earlier years.

The paragraph is headed "Young Pups learning to swim."

Early in August, usually by the 8th or 10th, I noticed one of the remarkable movements of the season. I refer to the pup's first essay in swimming. Is it not odd—paradoxical—that the young seal, from the moment of his birth, until he is a month or six weeks old, is utterly unable to swim? If he is seized by the nape of the neck and pitched out a rod into the water from the shore, his bullet-like head will drop instantly below the surface, and his attenuated posterior extremities flap impotently on it. Suffocation is the question of only a few minutes, the stupid little creature not knowing how to raise his immersed head and regain the air again. After they have attained the age I indicate, their instinct drives them down to the margin of the surf, where the alternate ebbing and flowing of its wash covers and uncovers the rock or sandy beaches. They first smell and then touch the moist pools, and flounder in the upper wash of the surf, which leaves them as suddenly high and dry as it immersed them at first. After this beginning, they make slow and clumsy progress in learning the knack of swimming. For a week or two when overhead in depth, they continue to flounder about in the most awkward manner, thrashing the water as little dogs do with their fore-feet, making no attempt whatever to use the hinder ones. Look at that pup now, launched out for the first time beyond his depth; see how he struggles—his mouth wide open and his eyes fairly popping. He turns instantly to the beach, ere he has fairly struck out from the point whence he launched in; and as the receding swell, which at first carried him off his feet and out, now returning, leaves him high and dry for a few minutes, he seems so weary that he weakly crawls up out beyond its swift returning wash, and coils himself up immediately to take a recuperative nap. He sleeps a few minutes, perhaps half an hour, then wakes as bright as a dollar, apparently rested, and at his swimming lesson he goes again. By repeated and persistent attempts, the young seal gradually becomes familiar with the water and acquainted with his own power over that element, which is to be his real home and his whole support. Once boldly swimming, the pup fairly revels in his new happiness. He and his brethren have now begun to haul and swarm along the whole length of St. Paul coast, from Northeast Point down and around to Zapadnie, lining the alternate sand beaches and rocky shingle with their plump black forms.

I now read from page 141 of Volume I, Appendix to the British Counter Case, from Mr. Macoun's report:

The first pups I saw swimming in 1892 were in the water in front of North rookery on St. George Island, the 18th July. The day was bright and warm, and the tide at the time of my visit was just beginning to flow. A great many pups were playing in the pools among the rocks near the edge of the sea; in one place there were forty or fifty going, in many others more than half that number, while all along the shore the young seals were in little groups of from three to ten. No old seals were near them but those swimming about in the water and those going to and coming from it. As the tide came in some of the pups slowly retreated, but many of them remained among the rocks until the water was some distance beyond them. They played about in much the same way as holluschickie do, and swam from one rock to another and back many times, with no appreciable interval of rest. I neither at this time nor on any other occasion saw an old seal attempt to teach a pup to swim nor carry it to the water; nor did I ever see anything that would lead me to suppose that pups learned to swim. On the contrary, a pup cut from its mother can swim for a long time. Ten days later these pups had increased considerably in size, and were swimming and playing about in the water in great numbers, seeming as much at home there as the older seals did; a few of them were 50 or 60 yards from the shore diving without apparent effort through the large waves that were coming in.

Early in August pups had begun to haul out with the holluschickie on the North side of Lukannon Rookery, nearly a mile from the rookery, and by the middle of that month a great many of them were to be seen far from the rookery grounds. They were of course, in greatest numbers in front of and near.

I think, Mr. President, it would save you a little trouble if I asked you to be kind enough to take the chart of the rookeries. Would you kindly take before you—I will have to refer to it a little later on—Chart 2 of the Pribilof Islands, in the United States Case. If you will turn it with the north from you, the way the map is written, you will see Reef Rookery, Lukannon Rookery, Polavina Rookery.

Lord HANNEN.—Which island?

Sir RICHARD WEBSTER.—I am on St. Paul's Island entirely, the larger of the two. You will find Zapadnie Rookery, Tolstoi Rookery, Reef, Lukannon and Polavina. I shall have to refer to that map later on.

They were of course in greatest numbers in front of and near Lukannon, Ketavie and Reef Rookeries, but they extended in an unbroken line from Lukannon to the landing place at the village.—

That, my Lord, is all the way around that point, Garbatch Rookery, right around to the village. The landing place of the village is where Village Cove is written. The landing referred to by Mr. Macoun is at Village Cove—

in places mixed with holischickie, but very frequently there were no older seals near them. At Black Bluff and between Zoltoi Sands and the Village landing place, large bands of pups swam about from place to place or hauled out on the rocks and sand. It does not seem possible or probable that the mother seals should find their own young ones among so many and at such a distance from the breeding ground; and during the whole time I was on the Pribilof Islands I never saw a female seal suckle a young one except on a rookery.

We have got this from the observation of Mr. Macoun, and we have got it from the statement made by Mr. Elliott long before, that from Northeast Point down to Zapadnie—You will see, Mr. President, that Northeast Point is up at the extreme end of the island; Zapadnie is the westernmost of the rookeries, my Lord, a little to the left of the village; and Mr. Elliott describes the pups that have just learned to swim as having hauled out and swarmed along the whole length of St. Paul's coast from Northeast Point down and around to Zapadnie.

It seems to me—I must not put it higher than that—as not an unreasonable suggestion to make, that the pups being born some where between—speaking roughly—the 20th of June and the first week in July. By the beginning of August they are found spread all the way along the coasts of that island. It does not seem to me an unreasonable inference to draw that after that time they are independent of their mothers; and I ask the court to observe that when the evidence shows us that no female seal has ever been seen, according to the evidence, giving suck to a pup except upon a rookery, it is a very strong corroboration of the point which I am pressing upon the Tribunal, that after the pups scatter, are podded out and spread along the islands, they are either wholly, or comparatively speaking independent of their mothers. Would the President kindly follow on to page 141, the next passage:

From the time the pups first go into the water, they are to be seen with pieces of sea-weed in their mouths, and there is no reason for doubt that from this time until they leave the island, at least a considerable portion of their food is composed of sea-weed picked up along the shore or in the waters adjacent to it. Mr. Elliott says that he knows fur-seals feed to a limited extent upon crustaceans and squid, and also eat tender algoid sprouts. Perhaps the seals live upon crustaceans and squid for the first five or six months they are at sea. Squid, as has been shown in another part of this Report, are plentiful near the seal islands.

Now, Mr. President, the proposition which I am contending for is this: that after the first four or five weeks, to put it most against myself, the seals are in such a condition that they are practically inde-

pendent of their mother; and I shall call attention to that later on in connection with the evidence which I have to call particular attention to about the killing of females with milk in their breasts at sea at certain times later in the year.

I want now to make a digression in order to save repetition later on. This is the first reference that I have made to Mr. Elliott. I ask permission of the Tribunal for a very few minutes to let me put clearly before them what are the facts with regard to Mr. Elliott, his position and his reports, for of all things that are astonishing in the conduct of this case the abandonment of Mr. Elliott's report of 1890 is the most astonishing. Sir, there is not the slightest ground in the evidence or in anything before the court for regarding Mr. Elliott as other than a man of impartiality and of accuracy; but I am not going to allow it to remain upon my statement or upon anything which I cannot vouch for from the documents. May I for a few moments before the court adjourns put this matter before them as briefly as possible.

You will remember, Mr. President, that Mr. Elliott was appointed under an act of Congress. He has made statements in his report to which I shall come later on in my argument—statements of fact that are absolutely inconsistent with the United States case. That may be a good reason for suppressing his report or it may be a bad reason. So far as I know upon the whole of this evidence it is the only reason that can fairly be suggested. Now, Mr. President how does the matter stand? There are categorical statements of fact, extending over many days in Mr. Elliott's report, to which I have to call attention later, which are capable of distinct contradiction. He was accompanied on that visit in the year 1890 by not less than four Government agents, Mr. Goff, Mr. Nettleton, Mr. Lavender and Mr. Murray. There was also present on that island during a great part of the time a perfectly independent gentleman, Prof. Palmer. I am quite aware that Mr. Foster has said that they do not agree with Mr. Palmer's conclusions; and I was not surprised, for whenever.——

Mr. FOSTER.—I did not say that.

Sir RICHARD WEBSTER.—I so understood you.

Mr. FOSTER.—I said a great many of them.

Sir RICHARD WEBSTER.—For whenever a statement is made, or evidence is given, I am aware, against the view of the United States, the United States do say that they do not agree with that; and of course they are quite within their rights. But my point is this, Mr. President; and I ask the court to consider this in fairness to the case I am presenting: that of those four gentlemen though they make affidavits on some minor points, to which I shall call attention later on, not one of those four gentlemen has made any affidavit inconsistent with Mr. Elliott's statements of fact. Nay, more; Mr. Stanley Brown was sent to the islands in 1891, Mr. Elliott having made his report in the autumn of 1890. I do not know whether Mr. Stanley Brown had Mr. Elliott's report in his hand or not. We have never been told, and I have no right to assume it; but one thing is certain, he either had it or he had it not. If he had it, he has not contradicted Mr. Elliott on the most important and salient facts, as I shall show later on. If he had it not, I do not think the court will think it was the right thing to send a perfectly independent gentleman to the islands without giving him some information at any rate as to what the report was which had been presented to the Government by their accredited agent. Therefore, the first point that I make with regard to this is that on three separate occasions Mr. Elliott has been put forward by the United States Gov-

ernment as being the most experienced person who could possibly give information with regard to seal life. He has been put forward and chosen with that object; and at no stage, Mr. President, prior to this case have the contents of that report from which I read the extract—I mean the report of 1881—been impeached until the matter came in controversy to-day. You may remember when Sir Charles Russell quoted from that report, stating that he did not understand that to be attacked, my learned friends said they had not referred to it and they must not be understood as agreeing at all in Mr. Elliott's earlier conclusions.

But now, if the court will give me a very few moments with regard to this matter in order to complete it, I am in a position to put before the court that which I certainly had not the opportunity of doing a few days ago. I happen to have before me the report of the debate in the House of Representatives and in the Senate when this gentleman was appointed; and I read from the public Congressional Record.

Mr. CARTER.—Is that in the case?

Sir RICHARD WEBSTER.—It is not.

Mr. CARTER.—Then we object.

Sir RICHARD WEBSTER.—I read from the public document of the Congressional Record of what happened in the Senate when Mr. Elliott was appointed.

The PRESIDENT.—Is that an official paper?

Sir RICHARD WEBSTER.—And I would tell you also that I am going to read from the letter written from the Treasury Department at Washington, an official letter.

Mr. PHELPS.—Will my friend excuse me. If we are permitted to put in evidence from the public documents and elsewhere on the other side of this case when we come to reply, I have no objection to your reading the observations of any member of Congress on this subject.

Sir RICHARD WEBSTER.—Mr. Phelps, I should not object, if it were for me, to any public document being referred to upon this or any other question; because in my opinion

Mr. PHELPS.—We should be glad to read the Secretary of the Treasury's letter that accompanied this report and some other matters. If we are to try Mr. Elliott we had better try him upon the evidence on both sides.

Sir RICHARD WEBSTER.—Yes, I quite agree. Mr. President would you prefer that I should suspend for the present?

The PRESIDENT.—If there is an objection I think it would be better for you to suspend.

Sir RICHARD WEBSTER.—Before we adjourn will you allow me to state that I proposed to read the official letter of the 13th of March.

Lord HANNEN.—That stands on a different footing than the matter to which objection was raised.

Sir RICHARD WEBSTER.—Oh, no.

Lord HANNEN.—I thought you were going to read reports of speeches in Congress, and that I understood was objected to.

Sir RICHARD WEBSTER.—It was not my fault, my Lord, that interposition was made before I had the opportunity of explaining myself fully. I was going to read from the letter of Mr. Batchelor, the Acting Secretary, from the Treasury Department, office of the Secretary at Washington, the 13th of March, 1890. My only reference to it is the Congressional Report. When that letter had been read I did subsequently intend to refer to some of the observations made in the debate. I wish the court to have exactly before them what my proposition is.

The Tribunal thereupon adjourned for a short time.

The PRESIDENT.—Before you proceed, Sir Richard, we should like to have a few words together.

The Tribunal then proceeded to consult for a short time.

Sir RICHARD WEBSTER.—I have had an intimation, Mr. President from my learned friend, Mr. Phelps, who is always courteous in these matters, that may save the Tribunal further trouble with reference to their consultation.

He does not propose to make any suggestion against Mr. Elliott other than can be gathered from the face of the Report itself in the way of criticism, and I do not wish to introduce any extraneous matter with a view of either commenting upon or raising any comment upon Mr. Elliott personally, it being open both to my learned friend, Mr. Phelps and myself to criticize the Report itself. Therefore it is not necessary for me, as there is nothing before the Tribunal, to bring forward any independent testimony with regard to it.

The PRESIDENT.—The Report having been admitted, it is better to proceed on that alone.

Sir RICHARD WEBSTER.—It is very satisfactory to me, because my learned friends have, whatever the objection may have been, met us in a way that is fair, when it was necessary to dismiss or get rid of matters for the purpose of shortening the proceedings. The Tribunal will, of course, see why I was anxious that they should have sufficient information to enable them to judge of the merits of the Report, and I am willing to take it upon the Report itself. Therefore I pass from that. The Report, as you will see, bears on its face matter which may be criticized and also evidence both of great accuracy and obvious veracity, as we shall submit. I am very glad indeed that the occurrence of the incident will enable me to shorten the time of my argument by not having to refer to certain documents which have been put into my hands.

Now, Mr. President, Lord Hannen was good enough to put a question to me, and I apologize for not having the answer ready at the moment, as to whether there was any evidence of the emaciation of females.

Lord HANNEN.—Well, it was rather the other side of it. My question was whether there was any evidence of their having a store of fat like that of the males.

Sir RICHARD WEBSTER.—Well, my Lord, I will not apologize to this Tribunal for not being able to answer any question at the moment it is asked. It is difficult to carry all the facts in one's memory, but my learned friend, Mr. Robinson, has been good enough to remind me of a passage which we should read in another connexion which will be found at page 214 of the British Counter Case from a book of undoubted authority by Professor Allen. I will look at the rest of the book to-night to see if there is any other authority on the matter, but this appears to me bear directly upon Lord Hannen's question.

The habit of prolonged abstinence at the breeding season is well known to be normal among the *Pinnipedia* as a whole; and notwithstanding the number of years over which the habits of seals have been observed, there is no record of food being found in the stomachs of females when killed upon the islands, or any facts that justify the statement that nursing females leave the islands on feeding excursions.

Writing particularly of the eared-seals (or fur-seals and sea-lions), Professor Allen says:

One of the most striking features in their history is that at this period [that of reproduction], *both sexes* pass weeks, and even months, without food, or without often visiting the water. Arriving at the breeding-grounds exceedingly fat and unwieldly, they seem to be sustained by the fat of their bodies, they finally leave at the end of the breeding season greatly emaciated.

A similar fact has been long known in respect to the walrus, whose period of fasting, however, seems to be shorter than that of the eared-seals.

Then in this Monograph of 1880, Professor Allen writes on the same subject:

The males, during the breeding season, remain wholly on land, and they will suffer death rather than leave their chosen spot. They thus sustain, for a period of several weeks, an uninterrupted fast. They arrive at the breeding stations fat and vigorous, and leave them weak and emaciated, having been nourished through their long period of fasting wholly by the fat of their own bodies. The females remain uninterruptedly on land for a much shorter period, but for a considerable time after their arrival do not leave the harems.

I will look to see before to-morrow whether there is any other evidence with regard to the sustenance of the female during this period being drawn from the fat. It is plain that Professor Allen in his earlier reference which I cited there refers to the fat of their bodies in the case of both sexes enabling them to fast from the time they do, notwithstanding the strain there is on their system.

This is by no means the only evidence. There are two other branches to which I propose to call attention which are in my submission of very great importance. The first is that speaking of the seals whose bodies have been opened prior to this Case, male and female; speaking of the female particularly, until this case commenced there is no evidence at all of anything being found in their bodies. There is one passage in Mr. Stanley Brown's later affidavit, of 3 female seals being killed at a late date to which I will call attention presently, one of which was found to have food in it. That is the only evidence, but of the fact that the female seals which have been killed in large numbers, for the purpose of examination only, have no food in them, is spoken to by abundant testimony prior to this case. Next there comes the natural fact to which I must refer, though the subject is somewhat unsavoury, and that is the absence on the rookeries of any excrement or any excreta of any sort or kind.

Lord HANNEN.—Upon that may I make a suggestion, simply for the purpose of acquiring information? May not they have habits of cleanliness which would account for it? I am simply enquiring, but may they not go into the water to get rid of any excreta?

Sir RICHARD WEBSTER.—There is no evidence of their doing so.

Lord HANNEN.—It only passed through my mind; that was all.

Sir RICHARD WEBSTER.—And I may say, my Lord, that it was present to our minds too, and we endeavored to see if there was any evidence of that kind, but there is none. It would be a very remarkable incident, having regard to the time that they remain on land, and their general habits if it were so; but the evidence is particularly strong, and it is my duty to call the attention of the Tribunal to it.

Now I would ask the Tribunal to refer to paragraphs 232 to 235 of the British Commissioners' Report.

232. Some particulars are given on a later page respecting the abstention from food of the fur-seals while remaining upon or about the breeding islands. It appears to be certain that the mature males doing duty on the breeding rookeries do not feed at all during the breeding season, and that for some time, at least several weeks, after landing, the breeding females do not leave the rookery grounds in search of food. There is no apparent reason why the "holluschickie," or young males, should not go to sea in quest of fish. Singularly enough, however, though animals of this class have been killed by hundreds of thousands upon the breeding islands under all conceivable conditions of weather, and often within less than an hour of their deportation from their hauling-grounds, the almost universal testimony is to the effect that their stomachs are invariably found to be free from food.

233. With a view to obtain such direct information on this subject as might be possible, the stomachs of seals killed in our presence were examined; and though the results of these examinations, noted below, do not entirely confirm the statement just referred to, they show a remarkable absence of food. The number of seals which it was thus possible to examine was of course small.

Then occur the references to 20 seals killed on St. George, and 18 seals on St. Paul, the result of which is as to the male seals—that no particle of food was found in any of them.

Then:

From the large North rookery on Behring Island, 5th September, an adult male or "seacatch," two females, and an unweaned pup, were driven directly from the rookery ground, about 200 yards distant, and killed, by permission of the authorities, for presentation by us as specimens to the British Museum. The stomachs of all four were completely empty, with the exception of a few worms in those of the three adults. Not only the pup, but the females, and even the old male, were fat and in good condition.

And in this connection I mention, but do not read, Mr. President, paragraph 306, which was read by me yesterday during the Attorney General's argument, which bears directly upon this.

Now I call your attention to paragraph 242.

Perhaps the most notable feature in regard to this food question, and one directly consequent on the prolonged abstinence of the seals from food while on and about the islands, is the entire absence of all excrement on the rookeries and hauling grounds. Captain Bryant appears, however, to be the only author who has specially mentioned this particular and striking fact. He writes:

"The fact of their remaining without food seems so contrary to nature, that it seems to me proper to state some of the evidences of it. Having been assured by the natives that such was the fact, I deemed it of sufficient importance to test it by all the means available".

I hope the Tribunal will kindly follow this a little carefully, because in a later affidavit, contrary to all the other testimony, and contrary to his own testimony before given in this respect, Mr. Stanley Brown expresses the opinion that excrement is to be found on the rookeries. I shall contrast those two statements in order to show that I think he is mistaken in the opinion he forms upon that.

Accordingly, I took special pains to examine daily a large extent of the rookery, and note carefully the results of my observations. The rocks on the rookery are worn smooth and washed clean by the spring-tides, and any discharge of excrement could not fail to be detected. I found, in a few instances where newly-arrived seals had made a single discharge of red-coloured excrement, but nothing was seen afterwards to show that such discharges were continued, or any evidence that the animals had partaken of food. They never left the rocks except when compelled by the heat of the sun to seek the water to cool themselves.

That bears on the question that his Lordship put to me.

They are then absent from the land for but a short time. I also examined the stomachs of several hundred young ones, killed by the natives for eating, and always without finding any trace of food in them. The same was true of the few nursing females killed for dissection. On their arrival in the spring they are very fat and unwieldy, but when they leave, after their four months' fast, they are very thin, being reduced to one-half their former weight.

I cannot help calling attention to this, that this is evidence written by a competent gentleman, a gentleman who is a witness for the United States, and writing independently of any controversy or any question, simply with a desire, no doubt, to tell scientifically what was the actual fact.

Senator MORGAN.—Does the evidence show, or is there any statement of the weight of those females when they arrive, and the weight, when they go out.

Sir RICHARD WEBSTER.—Not comparatively, Mr. Senator, but there is abundant evidence about various ages. There is no comparison. It could not be taken; and there are no statements beyond the fact that they are emaciated and thinner.

Senator MORGAN.—And no statement of what they weigh when they arrive in this condition?

Sir RICHARD WEBSTER.—No.

Mr. Justice HARLAN.—Is there any evidence as to what the females weigh when they arrive?

Sir RICHARD WEBSTER.—No, only at various periods of their life. There is evidence that at the period of three years old they weigh so much, and when four years old they weigh so much.

Mr. Justice HARLAN.—What are those weights?

Sir RICHARD WEBSTER.—Well, unless you wish me to give it now I have it in connection with another part of the case, and I could not exactly give if off-hand.

Mr. Justice HARLAN.—That will do.

Sir RICHARD WEBSTER.—My recollection is that a female that bears young weighs about 80 pounds, I think it is, but I am afraid I must ask the Tribunal to let me correct that if necessary.

Senator MORGAN.—It must weigh more than that.

Sir RICHARD WEBSTER.—I think not, speaking of the female, but do not let it be assumed that I state it positively, because I am not prepared to answer the question at the moment. I have it in connection with another matter.

At page 46 of Mr. Elliott's first Report, it will be seen in one week they are from 6 to 7½ lbs; 6 months, 39 lbs; 1 year, 39 lbs; 2 years, 58 lbs; 3 years, 87 lbs (you see my memory was not very far out); 4 years, 135 lbs; 5 years, 200 lbs; 6 years, 280 lbs; and from 8 years to 20 years, 400 to 500 lbs.

Senator MORGAN.—Those are male seals?

Sir RICHARD WEBSTER.—Both; that is the table showing the weight, growth and size of the fur-seal from the pup to the adult, male and female; and he adds this as to the weight of female seals.

The adult females will correspond with the 3 year-old males in the above Table, the younger cows weighing frequently only 75 lbs, and many of the older ones going as high as 120 lbs; but an average of 80 to 85 lbs is the rule. Those specimens of the females which I weighed were examples taken by me for transmission to the Smithsonian Institution; otherwise I should not have been permitted to make this record of their weight, inasmuch as weighing them means to kill them; and the law and the habit, or rather the prejudice, of the entire community up there is unanimously in opposition to any such proceeding, for they never touch females here and they never set their foot on or near the breeding grounds on such an errand. It will be noticed also that I have no statement of the weights of those exceedingly fat and heavy males which first appear on the breeding grounds in the Spring. Those which I have referred to in the Table above given were very much heavier at the time of their first appearance in May and June than at the moment when they were in my hands in July, but the cows and the other classes do not sustain protracted fasting, and, therefore, their weights may be considered substantially the same throughout the year.

Then at the end of paragraph 242 in page 42 of the British Report there is a statement which I think was read yesterday but the last part of paragraph 243, was not read which is the commissioners own statement.

Though not at the time aware of Bryant's statement, above quoted, the absence of excrementitious matter was one of the first points noted and remarked on by us after landing upon the Pribiloff rookeries, and it is to the absence of such matter alone that the continuous herding together on one spot for several months of so many thousand animals is on sanitary grounds rendered possible.

I remember that it was read.

Now I have read sufficiently from the Counter case and if you will kindly turn to page 144 of volume 1 of the Appendix to the Counter case you will find some very important evidence by Mr. Macoun on that matter.

No visit was paid to any rookery on either St. George or St. Paul without a careful examination of the rookery and hauling-grounds being made, for the purpose of recording the amount of excrement to be seen on them; the matter being of impor-

tance in connection with the question of the feeding or abstinence of seals during the breeding season. Shortly before labour began a female was sometimes seen to void a small quantity of excrement; once only, in addition to this, did I see excrement on rookery-ground that had not been voided by pups. In the instance referred to, Mr. Brown who was with me at the time said that it was probably from a female that had recently come ashore.

That is Mr. Stanley Brown who is referred to there.

In this connection Captain Bryant may be quoted. He says:

I found, in a few instances, where newly-arrived seals had made a single discharge of red-coloured excrement, but nothing was seen afterwards to show that such discharges were continued, or any evidence that the animals had partaken of food.

Mr. Vincent Colyer, in his Report to the Secretary of the Interior, dated 18th February, 1870, likewise says:

The assertion that the fur-seal eats but little food from June to September may be true; certainly, there was little or no offensive excrement even in October, when I believe it is acknowledged that they do get some food from the water.

On the 27th July a large piece of fresh light-coloured excrement, firm, and of cylindrical form, was noticed on the ground where holluschickie had been; a great many worms such as are found in seals' stomachs were mixed with it.

A large harem, the resort of over 300 seals, near the west end of Reef rookery, was visited by me almost daily, and excrement was always carefully looked for. This harem lay just beneath an overhanging bank, and the opportunities for observation were excellent; but, though between twenty and thirty visits were made to this place, no excrement was ever seen either on the breeding-ground, or the slope leading to it, with the exception of very small pieces voided by pups which differs greatly from that of older seals, both in shape and colour. While it is certain that holluschickie go to and from the water at all times, and when the weather is warm quit the land almost *en masse*, there is no satisfactory evidence to show that they feed while in the water. Several hundred stomachs were opened in my presence during the summer of 1892, and no trace of food was found in any of them, though, while struggling together in the killing-ground, some of them voided a small quantity of dark yellowish excrement.

Now the suggestion is made for the first time in the evidence in connection with the United States Counter Case that this absence of this sign is due to the ground being such that the excrement is soaked up. While in the first place the evidence is conclusive as to the dejecta of the animal that it cannot be of that character, you would not expect it to be, and it is not in fact—if the Tribunal desire further information, though no further information is necessary, than that contained in Mr. Macoun's report there is of course the most direct testimony in regard to the matter in the statement annexed to the Supplemental Report of the British Commissioners. I do not at present refer to it because I do not desire to give rise to anything as to which discussion can take place, but if the Tribunal have any doubt I shall ask them to refer to it later on. They can find it out for themselves in Paris without referring to the supplemental Report. I desire to call attention to the character of this; and I would direct your attention to Mr. Stanley Brown's first affidavit when no suggestion had been made at any time, that either on the rookeries or elsewhere, was excrement to be found. This is on page 12 of the 2nd Volume of the Appendix to the United States Case, under the heading "Rookeries":

As a result of the volcanic origin of the islands, their shores are, with few exceptions, either made up of bowlder-strewn lawledges or covered by jagged fragments of basalt of all sizes, the sharp edges of which are only slightly worn by the seals flippers or more completely rounded by the waves at the water's edge. There are a few true sand beaches, occasional level areas are found at the back of the rookeries, and in some places between the rock masses comparatively smooth interspaces occur, but even the level portions referred to must be reached by crossing a wide belt of bowlders of all sizes that have been pushed landward by the waves and by the ice which annually surrounds the islands. It is upon such shores that the seal "rookeries" are located. Of the ruggedness of these shores or of the irregularity "and confusion of the lava blocks that cover them it is difficult to form a picture, but it is in a measure indicated in the accompanying photographs".

And if you will kindly turn and look at that photograph and see the character of the rocks, part of the reef rookery, on St. Paul's Islands and remember the seals remain on those rookeries for weeks after going into the water, both male and female, I do not think it is saying too much when I suggest to you that the idea that the solid and hard *dejecta* and *excreta* of these animals can be soaked up so as to disappear will not commend itself to the mind of the Tribunal so far as it is necessary to decide this point; and yet it is the fact that this absence of excrement and *excreta* was common ground with everybody till the United States Counter Case, and then they do not go to the people who have known these rookeries for years, they do not go to the persons who would have been able to say from the knowledge of 20 years, but they go to Mr. Stanley Brown who, in his later affidavit, says that this absence of it is to be accounted for by it having soaked in to the ground to a certain extent. I think I am not doing an injustice to him when I say that that is scarcely to be credited as an opinion in the face of the evidence to which I have already called attention. In the same Volume will be found Mr. Morton's account of the rookeries at page 66.

Senator MORGAN.—When you say that the seals old and young remain without food on the Islands there for 5 or 6 weeks, do you mean also to say, Sir Richard, the males and females,—do you mean the old and the young females?

Sir RICHARD WEBSTER.—No; I did not mean old and young, if you include pups in old and young. I was speaking of the females and particularly I had in my mind the females whom it is suggested go out to sea for food and come back again during the period of nursing. My contention is this, and it is one upon which I ask the judgment of the Tribunal, that the females do not leave for food substantially, (I do not say that they do not ever go) till the independence of the pup with regard to the mother is practically complete; at that time, they leave to go to sea for food, the necessity of their being there having, practically speaking, disappeared. That is shown by two facts; that very shortly afterwards, that is to say within a few weeks, the pups are to be found at a considerable distance along the shore spread all along, and that at no time during the continued sojourn of the female upon the Island is any *excreta* to be found at any place where she has been. That is my contention, on which I ask your judgment when you come to the evidence.

Now, I was calling your attention to the character of the rookery ground; and in Mr. Morton's affidavit, at page 66, you will see this:

During the seasons of 1877 and 1878, while serving in the capacity of special Treasury Agent, I devoted my best attention and study to this subject. It may be said in the start that the grounds held by the fur-seals are known at the islands as "rookeries" and hauling "grounds." On the former are found the breeding seals, namely, the full-grown males not less than six years of age, and females of three years old and upwards. The grounds comprising the rookeries slope upward from the sea in a gradual and easy manner, and are characterized by hard dry surfaces of volcanic cement or basaltic rock. They are readily accessible from the water and possess other favorable conditions for occupancy by the seal life.

Now that is the condition of the rookery ground spoken to by Captain Bryant; that is the condition of the ground spoken to by Mr. Stanley Brown; that is the condition of the ground spoken to by Mr. Morton before any question had been raised suggesting that the *dejecta* from these animals might disappear into the soil absolutely impossible—inconsistent with all the known facts. Upon that I ask attention again to the British Commissioners' Report because they examined this matter, because there is no one that would suggest with reference to this

Report, that if Dr. Dawson and Sir George Baden Powell had found the fact of *excreta* on these rookeries they would not have stated it. Every single fact they did discover in this matter, however it told—and there was no reason to think it would tell in their favor at the time they made this Report—they have stated every single fact in the case as it came to their knowledge without bias or colour.

Now at Paragraph 260 they say:

It appears possible to mention only two conditions which have been avoided by the seals in the choice of their rookery grounds: these are mud and loose sand. On muddy ground the fur is doubtless apt to become uncomfortably clotted, and the sand if driven by the wind or splashed about by rain is probably also irritating to them. Shifting sandy ground besides renders the always clumsy locomotion of the seal when upon the land additionally difficult; but it may be noted that sandy beaches appear to be well liked by the seals when they haul out temporarily, and are not actually established for breeding purposes. On most of the rookery grounds, away from the actual beach, the character of the soil is such that it becomes beaten down between the projecting rocks into a hard and nearly smooth floor, a circumstance which depends in part on the incorporation with it from year to year of the felted hair which is shed by the seals themselves during the stagey season.

Then at Paragraph 256 sub paragraph 4, they say:

Reef Rookeries.—Occupying both sides of the outer part of the long promontory known as Reef Point, and facing to the north-west and south-east. The northwestern slope, often called Garbotch, is rather steep, and a part of the rookery ground occupied on this side consists of a narrow fringe of rocky shore overlooked by low basaltic cliffs. A narrow ridge, which is worn bare and occupied as a hauling ground by holluschickie in the early part of the season, and is frequented by all classes of seals at a later period, separates the northwestern from the southeastern side of Reef Point. On the south-east side there is a wide border of flat land but little elevated above the tide, upon which the greater part of the seals of the reef rookeries is found. Almost the whole of the rookery ground of the reef is plentifully strewn with angular masses of rock, though occasional smooth spaces also occur. The higher parts of the Reef Point consist very largely of a bed of volcanic scoriæ, lying compact and much in its original state, and forming a fine hard surface considerably different from that found on most of the rookeries.

So there you have the statement, made from independent sources, that the character of the ground between is either rock, or else it is beaten down hard ground.

Senator MORGAN.—That is in the rookeries proper?

Sir RICHARD WEBSTER.—That is in the rookeries proper.

Senator MORGAN.—How do the holluschickie haul out?

Sir RICHARD WEBSTER.—They haul out on ground practically speaking beaten down by the lying upon it, and which consists to a large extent of seal hair and fibre toughened from the pressure of years and centuries.

Senator MORGAN.—The holluschickie do?

Sir RICHARD WEBSTER.—Yes. It is also hard, although not the same kind of hardness as would apply to the rocky formation of the rookery and it is the fact that upon the rookeries with this abundant opportunity of examination, no trace of anything of the kind has been found.

Now this is what Mr. Stanley Brown says at page 387 of the United States Counter Case. There is nothing in his original affidavits contradicting the universal testimony and no evidence upon this point from persons of experience contradicting what I have stated.

The presence of excrementitious matter upon the breeding rookeries is recognized both by sight and smell. It is of a yellowish color, and though much of it is excreted it is of such a liquid consistency that it is quickly rubbed into and mingled with the soil, and thereafter its existence can only be noticed through the discoloration of the soil and the offensive odour. The latter is readily detected at a distance

of miles when the wind is in the right direction, for the soil on the breeding rookeries is completely impregnated with it. The odour bears no resemblance to that which arises from the bodies of a large number of assembled animals.

The quantity of excrementitious matter present is influenced by the nature of their diet, which, being fish, is largely assimilated, while in their coming and going much of it may be deposited in the water, to say nothing of drenching from rain to which the rookeries (many of which are solid rock) are subjected.

Upon the face of the affidavit, the statements are a little inconsistent. You see the character of the rocks from the photograph which speaks for itself—the rain would not wash it away from the hollows of those rocks. If the statment be supposed to mean that the excreta of the seal are not solid, the whole of the evidence in this case is to the contrary of that. That the females do void something of that character just before the birth of their pup is spoken to by Mr. Bryant. I submit that upon this evidence the testimony is all on one side and in one direction, namely, that there is no evidence of any excreta being voided by female seals at any time when they are upon the rookeries and in attendance upon their young.

Now, Mr. President, I come to a part of the case which again I am happy to say does not require very much argument from me, because I am able to take the evidence almost entirely, if not entirely, from the United States, and that is with regard to there being food round the island.

For a long time it was suggested more than stated—suggested I think in the United States Commissioners Report—that the reason why females went far from the islands was because there was no food near.

Upon the evidence upon both sides it is clear that there is abundance of food far beyond what the seals require, remembering that it is common ground that a very large percentage of those upon the islands do not feed at all. There is evidence on both sides that there is abundance of food suitable for the seals in close proximity to these islands. I suppose it is scarcely necessary for me at present, Mr. President, to prove what the seals feed upon, but if I am ehallenged of course I will do so. I will state they feed upon cod—they feed upon practically all kinds of fish including herring salmon and halibut. They also feed, to a certain extent upon Squid, but having regard to the enormous amount that seals eat in the day, they must have something much more substantial to live upon than simply the squid which they can collect. However, the evidence in this case, on both sides, is that when food has been discovered in the stomachs of seals, it is found to be largely consisting of cod, and largely consisting of other kinds of fish, but among their most suitable food is the cod.

Now the evidence with regard to food near the Islands can be put shortly, but it must not be overlooked. I call attention first to paragraph 231 of the British Commissioners Report in which they say.

That the fur-seal is essentially a pelagic surface feeder, is further shown by the fact that it is not known to resort habitually to the best fishing banks in Behring Sea, such for instance, as the Baird bank, and that fish, such as the cod and halibut inhabiting water of some depth and feeding along the bottom, are often found in considerable numbers, not only near the breeding islands of the seal, but even in the immediate vicinity of the breeding rookeries of these islands. Such fish are actually caught at various seasons by the natives of the Pribilof Islands within 1 or 2 miles of some of the largest rookeries on the south side of St. Paul Island, and not more than 2½ or 3 miles off the rookeries on the north shore of St. George Island. On one occasion, while at anchor for a short time within less than half-a-mile from the largest rookery on Behring Island, at Cape Yushin, over twenty cod, with some other fishes, were caught from our steamer with two or three hand lines, in water not more than 6 or 7 fathoms in depth.

Then in Vol. 1 of the Appendix to the British Counter Case, pages 138 and 139, you will find, Sir, very important and very strong evidence with regard to this presence of food. This is what Mr. Macoun says:

When I landed at the village on St. Paul Island on the 30th June, cod and halibut were hanging before many of the natives' houses. In answer to my enquiry as to where they had been caught, I was told that they had been taken less than 3 miles from St. Paul Island, and between it and Otter Island.

Up to the 12th of September, the date of my final departure from the Pribilof Islands, natives went out fishing every fine Sunday, and, in fact, every day they were not engaged on work for either the Government or the Company, and good catches of fish were invariably made.

When on St. George Island the 17th July a great many cod were seen hung up to dry, and at dinner that day I asked the United States Treasury Agents and the officers of the Company why they had not fresh fish on the table. I was told that they could be had in abundance whenever wanted, but that they were all tired of fish.

"H. M. S. Daphné", while I was on board of her, was anchored during the forenoon of the 21st July in 18 fathoms of water, one-third mile off Dalnoi Point, St. George's Island, and cod, small halibut and sculpin were caught in great numbers at this time.

A holiday was given the natives on St. Paul Island on Saturday, the 13th August, and many of them spent the day fishing. Their boats were in sight all day between 2 and 3 miles off Lukannon rookery. They returned late in the afternoon with their boats half full of fish; there were many more cod than halibut, though the latter were much the larger fish.

I asked the natives how far they went out for fish later in the season; they replied that they never had to go more than 5 miles from land to get all the fish they wanted, and that it was only in September that they went that far. I was taken to southwest Bay, St. Paul Island, by a crew of natives, on the 23rd August. During the brief time I was ashore they fished about half-a-mile off Zapadnie rookery catching two halibut and seven cod. These men told me that the fish were always very plentiful near the island, but that until 1891 they had never had time during the summer months to catch them, when they were not driving or killing seals, there were the skins to salt and re-salt, the Company's ship to load or unload, and coal and provisions to be brought from the landing-place to the storehouses.

The next day salmon were seen in the lagoon near the village.

Then the next paragraph relates to Behring Island. I need not read that. Then it goes on:

Mr. Baldwin, who has been on St. Paul Island several years, told me that small squid are very numerous close to the islands, and Mr. Townsend.—

that is the United States gentleman—

Who has for several years been employed as a naturalist on the "Albatross" in Behring Sea, said more than once in my hearing that there was no part of Behring Sea that did not abound with them.

It is thus evident that should seals, whether males or females, require food during the time they resort to the islands, (which has not been proved) it is to be had in abundance close to the rookeries, while it is further apparent that the natives with the exercise of but ordinary diligence on their own part are in no way dependent on the slaughter of seals for food.

Now, Mr. President, it must not be forgotten in this connection that *ex concessis*, as I have said more than once to-day, the large proportion of the animals during a considerable portion of their stay on land do not require to catch fish—that is to say the bulls, the holuschikie and the females,—until such time as they are minded to go out again to sea.

Now let us look at the United States evidence upon this point. I refer to the evidence of Captain Tanner and I will ask the Tribunal kindly to turn to it. It will be found at page 374 of volume 2 of the Appendix to the case of the United States.

He says:

Seals killed in Behring Sea after the birth of the pups are largely mother seals and the farther they are found from the islands the greater the percentage will be. The reason for this seeming paradox is very simple. The young males, having no family responsibilities can afford to hunt nearer home where food can be found if sufficient time is devoted to the search. The mother does not leave her young except

when necessity compels her to seek food for its sustenance. She cannot afford to waste time on feeding grounds already occupied by younger and more active feeders; hence she makes the best of her way to richer fields farther away, gorges herself with food, then seeks rest and a quiet nap on the surface.

Well Sir, there is a very great deal of romance in that affidavit. I cannot help thinking that it would not have been undesirable to have had an opportunity, if the Treaty had permitted it, of testing such a statement by cross-examination—that the mother seal knows that there are fish in the neighborhood of the island, but knows that the young males, who have not got family responsibilities, are hunting themselves, therefore passes those fish by on the chance of catching others by and by, and goes out a greater distance to seek food. Not having time to take fish near at hand, she has time to travel great distances on the chance of other fish. There were other reasons given, for instance, which I will not fail to deal with, but to get, over that which the gentleman is by implication obliged to admit, namely the existence of a very large quantity of food in the immediate proximity to the islands, knowing that a very large proportion of the seals on the island do not require food—he has to write a little romance of the female seal who knows that the male seal has got no family responsibilities, therefore goes straight through, past the fish, in order to get to a richer feeding ground.

At page 504 of the first volume of the Appendix, is a statement by Captain Hooper, made quite indirectly, without reference to this point, which will be found very strongly corroborative:

Male seals remain upon and around the islands until the ice appears. The natives say the codfish also disappears with the first appearance of the ice.

The natives, of course, can only be those who live upon the islands. They can only speak from what they know, from their no longer being able to catch the codfish, which would have to be in the neighborhood of the islands during the time they would be able to catch them.

The statement made—no doubt correctly made—by Captain Hooper in regard to that matter is that the fish disappears with the appearance of the ice, in other words, the codfish remain there in the neighborhood until the ice comes. I therefore ask the Tribunal to allow me to assume, only for the purpose of my argument at present, not to repeat myself, that I have established the fact that there is an abundance of food around the islands, which, if it were the question of the immediate necessity of getting food and going back to its young, would be preyed upon by the female seal.

The PRESIDENT.—There is no information about the migration routes of the cod and halibut and those other fish?

Sir RICHARD WEBSTER.—None whatever; but we know Mr. President, that cod largely frequent the same waters constantly. I do not know that you remember, Sir; but I called attention to that in connection with the argument upon property, referring to the report of the United States Fishery Inspectors in regard to this matter. We know that cod come back to the same place continually. They are found upon some banks and in other places, and it is known that they return there continually.

Lord HANNEN.—Do they not depend on other fish, herrings for instance?

Sir RICHARD WEBSTER.—I do not know whether cod feed on herring, except this—that the herring is said to be fed upon by every fish from the sillock to the whale. The sillock is a little tiny fish, Mr. President, that is caught in Scotland, and which feeds upon the herring.

Mr. GRAM.—In my country we have the experience that cod come every year to the same places for breeding.

Sir RICHARD WEBSTER.—Yes. I believe the experience upon both coasts of America, where the cod fishing is very great; I believe the experience on the east coast of England and on the coast of Europe, is that codfish do come back to the same place year after year; but for my point, Mr. President, it is not very important, because there is abundant evidence that the cod are found, practically speaking, in all parts of Behring Sea.

The PRESIDENT.—And during the season when the seal is on the islands?

Sir RICHARD WEBSTER.—During the season when the seal is on the islands. I would call attention, Mr. President, as you have been good enough to put that question to me, to Captain Coulson's report, at page 235 of the Counter Case:

> At every station where the vessel was stopped, codfish were taken. In some localities they were abundant; at others only a few were caught.

I merely mention that for the purpose of showing that it is not, as far as we can gather from the evidence, a case of there being quantities of codfish distances away from the island, but as far as I can judge from the evidence and the evidence only, these cod appear in very considerable nnmbers, practically speaking, all around the islands.

But it may be said, "That is perfectly true; but you cannot deny that female seals, which we call nursing females, are found and killed at great distances from the island." Mr. President, it is no part of my c[illegible]se to deny it, and I never have, in any observation that I have made, in[illegible]tionally denied that at times, at distances from the islands greater than [illegible] the distance I have mentioned of twenty or thirty miles, seals with milk in [illegible] their breasts have been killed. But I ask the Tribunal in considering [illegible] this matter to be good enough to look at the whole question and not to [illegible] look at the question from the narrow point of view, closing their eyes to [illegible] all we know about natural history, which is the attitude that has been a[illegible]sumed by my friends upon the other side. I do not in any way want to [illegible] exaggerate or put their case unfairly against them. But I must remin[illegible] you that Mr. Coudert actually argued in this court, solemnly, before yo[illegible], that inasmuch as the pups were found with milk in them in the month [illegible] of November, that therefore it must be assumed that the pups were dep[illegible]endent upon their mother right up to the month of November. Well, of c[illegible]ourse it is an absurdity Mr. President.

That pups may occasion[illegible]ally suck as late as this, is extremely probable; but we have got to c[illegible]onsider what is going to happen. These animals are going in the nex[illegible] day or so right across the sea, hundreds and thousands of miles, to fin[illegible] their own living; and nobody suggests that they go on sucking the m[illegible]other then. It would be contrary to all the experience of every other [illegible]animal known, to imagine that it is dependent upon its mother up to w[illegible]thin four or five days of the month of November and then suddenly be[illegible]omes independent. What is the ordinary rule you expect to apply? [illegible]e it long or be it short, weaning takes place gradually, either at a longer [illegible] or a shorter period; and weaning takes place, at times, by the pup podd[illegible]ing and wandering away from the rookery, being able to support itself, [illegible]t being dependent upon the mother, so that the mother does not have to [illegible] find it out and feed it. But there is another most important incident in c[illegible]onnection with this matter which the United States advocates are obliged [illegible] wholly to overlook. They entirely forget that it is common knowledge [illegible]ever since we have

known anything about the fur-seal that a very considerable—when I say considerable I mean a large number—of these pups are actually killed by killer whales in the months of August and September on the very shores, when they begin to swim, and that a certain other number of these pups are killed by ordinary accidents of life, due to the stampedes upon the rookeries, the conduct of the bulls themselves, and other natural causes. We also have a substantial body of evidence of pups not infrequently dying from sun-stroke and from other causes of this kind; and that therefore there must every year be present in the waters of Behring Sea a large number of seals which have got milk in their breasts, milk which is drying off, showing seals that have given up suckling, seals whose pups are weaned or have died, this is certain, without any argument; and I challenge contradiction upon it.

What does it mean? We have at present no direct evidence of the time it takes for the milk to disappear entirely from the glands. We know they are very large glands. We know that a very large portion of the body of the seal is covered by the milk producing glands. You will remember, Sir, there is a photograph in one of the books of a seal that was cut open by the United States for the purpose of examination, and we further know that there are four of the mammae or teats, to each of which the milk goes. Some of us have some experience from other animals; but I admit that kind of experience is of no real value for the purpose of what I may call a quantitive estimate. But I do say this: it would be no exaggeration to suggest that milk would be present, must be secreted, got rid of and ultimately dried up for a period of two or three weeks in the bodies of these animals; and therefore my learned friends are obliged to assume this position, in order partly to introduce what I cannot help thinking is to a certain extent prejudice, and in order to indicate that injury is done to the seals upon the islands that the evidence does not warrant. Every seal that is taken, every female seal that is killed, is a crime. Every female seal that is killed, either she herself and the unborn pup in her—I am dealing now with seals that have delivered their young on the Pribilof Islands—is to be regarded as being lost, and therefore that two seals are lost, and if there is a pup upon the island, three.

Does the evidence warrant it? With very great deference, Mr. President, and only inviting the candid and severe criticism of this Tribunal upon my arguments, I submit the evidence does not warrant it at all; and I submit that when the evidence is examined there is nothing to show that any substantial number of females would be killed in Behring Sea by vessels that are pelagically sealing at distances outside thirty miles from the islands. Of course, Mr. President, it must not be put upon me that I am advocating pelagic sealing within ten or fifteen miles of the shore. I have said distinctly that I do not advocate it. It must not be put upon me that I am justifying pelagic sealing in Behring Sea during the months of May and June, when the females are gravid. That is another matter which I have disclaimed, and which I am going, of course, to come to later on when I deal with the supposed injury to gravid females. I am dealing now entirely with the injury to nursing females.

As I have said before, to make my note complete, I will merely mention in connection with this subject to form a starting point, sections 303 to 308 of the British Commissioners' Report. I do not wish to read them now, because I read them yesterday; but I want my argument to be self-contained, and therefore I call attention to them, that the Tribunal may have in one passage, so to speak, of my argument, all the references that bear upon this.

But now occurs some very important evidence on page 55, section 310 of the British Commissioners Report, which I read without comment, except to say by anticipation again that you will see whether the Commissioners have excluded any evidence that might tell against them:

310. In the Report on the fur-seal fisheries of Alaska (1889), Mr. W. B. Taylor states that the cows go out every day for food to a distance of 10 or 15 miles, or even further.

Of course if that means every day after they go on shore, that is obviously wrong. If it means every day after they have begun to feed, it may be true or it may not. I do not wish to tie anybody to the distance of "10 or 15 miles, or even further". I do not of course wish to dispute that if it be a matter of calculation.

Mr. P. F. Ryan states that the main feeding grounds of the seal during the summer stay upon the islands, and to which the cows are continually going and coming, are to be found, 40 to 70 miles south of St. George Island.

That, at any rate, does not look like suppressing anything which was against them; but I mention that for the purpose of pointing out that we have no means of judging on what information Mr. Ryan made that statement, or where that particular place is.

Mr. G. R. Tingle, in the same Report, says that the seals probably go twenty miles out in some cases in search of food.

Mr. Tingle had been of the United States Agents or Treasury Agents. All these men that I am quoting from are Treasury Agents of the United States:

312. The following is a summary of the evidence personally obtained in 1891 from those supposed to be most capable of giving an opinion on the subject:

Mr. G. R. Tingle stated that he believed seals from St. George went to feed, for the most part, about 30 to 40 miles to the southward or south-eastward of that island. From St. Paul he was not aware that they went in any particular direction.

Mr. J. C. Redpath did not know of any special place or places to which the seals go to feed, but believed that the females go from 10 to 15 miles from the islands for that purpose.

Mr. D. Webster thinks that seals go from St. George Island, when feeding in the autumn, about 60 miles southward; he believes that there is a favourite feeding ground in this vicinity, because he has seen numerous seals there when on his way from the islands to Ounalaska.

Mr. Fowler stated that he believed there was a favourite feeding ground of the seals about 30 miles off north-east point of St. Paul Island. This was not from personal knowledge, but depended on statements that seals had been seen in abundance there.

Natives of St. Paul informed us that the females from the rookeries went only 3 or 4 miles to sea to feed, always returning to their young on shore the same day. When questioned as to the classes of seals seen further out, as for instance, midway between St. Paul and St. George Islands, they stated that all kinds of seals might be found there, but added again that the females usually do not go far from the rookeries.

I will leave Mr. Grebnitzky for a moment, and will come back to him.

Mr. Tillman, the Agent of the Russian Government, in charge of Copper Island, where he has been for two years, thinks that the females go as much as 2 to 4 miles off shore to feed, but return to the rookeries every night.

Mr. Kluge, who has been for twenty-one years in the service of the Alaska Commercial Company on several different islands, agreed in this point with Mr. Tillman, and added that he knows from close personal observation, which he was able to make on Robben Island, that the females return every night, as stated.

Snegiloff, the native foreman on Behring Islands, thinks, on the contrary, that the females may leave their young for several days, and may go as far as 10 miles from land to feed.

Now Grebnitzky, whom I passed for a moment:

Mr. N. Grebnitsky, Superintendent of the Commander Islands, stated, as the result of his own personal observation and long experience, that the females went out to

sea while suckling the young, but not further than half-a-mile or a mile from the shore. Most of the natives, he added, thought that the females did not feed during this period, but in this he believed them to be mistaken.

It is not an unfair comment to say that this is a striking instance of how little we really know accurately. I call attention to it in order that the Tribunal may see that upon the evidence which was there collected, of a number of witnesses of equal credit, a number of witnesses of equal experience, all Treasury Agents, and therefore whose interest it would be to tell the truth and not to suppress the matter, some of them say they do not go more than 10 or 15 miles, others think they go farther. But it is extremely important to notice we are dealing for this purpose only with the period when from the wasteful point of view it may be suggested that you ought not to kill the female because the life of her pup depends upon it; for in so far as it referred to the killing of females on whose life a pup's life did not at the moment depend, I protest that there is not only no reason for interfering with it, but it would be contrary to all the rules which have governed similar matters to interfere with the killing of a female simply because it is a female.

It is not unimportant, and that is why, Mr. President, I postponed the reference to Mr. Grebnitzky, to remember that Mr. Grebnitzky made a further affidavit for the United States on the 26th of November—8th December, 1892, and that they sent that to St. Petersburgh from Washington in order to have certain corrections made in the affidavit that it might be an affidavit which would go as far as Mr. Grebnitzky could go in support of the United States Case; and I ask you just to let me read what he says upon this at page 366 of the Counter Case of the United States:

Consequently when the mothers, who after the birth of their pups leave the rookeries in search of food (travelling sometimes considerable distances, I do not know exactly how far), and fail to return their pups must necessarily die.

Those words "considerable distances" were inserted in the affidavit after the affidavit had been sent to him, no doubt properly sent to him, from Washington, that the further correction might be inserted.

Mr. FOSTER.—It does not so appear.

Sir RICHARD WEBSTER.—Well, I think it does so appear. If it is not the fact, by all means, if you say it is not the fact I will accept that. I think it does appear in the papers that it is so.

Mr. FOSTER.—I will state what I understand the fact to be, if you desire it.

Sir RICHARD WEBSTER.—I was merely dealing with what appears upon the face of the affidavit; but my point is that Mr. Grebnitzky, who was previously stating that he did not think they went farther than half a mile or a mile says in the revised affidavit, "considerable distances" but he does not know how far.

We know, Mr. President, that the result of the combined knowledge on the Russian islands—and Mr. Grebnitzky comes from the Russian Islands,—demonstrates that they are rarely to be found outside 10 miles except in the particular case of a particular place which it is considered some seals go to in connection with some island.

Mr. FOSTER.—I have no idea that you wish to make any statement that is not consistent with the facts. If you will observe the date of the corrections, you will see they are of the same date as the original affidavit, December 8th. The fact is that the errors in copying were corrected by the Consul-General at St. Petersburgh.

Sir RICHARD WEBSTER.—If you, Mr. Foster, say they are errors in copying that removes, of course my observation.

Mr. FOSTER.—The date shows it.

Sir RICHARD WEBSTER.—It may not; but I have the information somewhere. However, I will not rely any further upon the statement after what you have stated. It is not a matter of any great importance.

But now, Mr. President, I come to the evidence of specific experiments or examinations made by the United States in order to support this matter; and I want to call particular attention, and I ask for the attention of the Tribunal, to two affidavits, or two tables, one of Mr. Alexander and the other of Capt. Hooper. Mr. Alexander's table will be found at page 242 of the United States Counter Case. It is the United States evidence in the year 1892. Now, let us just see, Mr. President, whether or not this supports the theory that the seals go out for the purposes of food. You will notice, sir, that there were killed between the 6th and 26th of August seven seals. I am very sorry, Mr. President; I ought to have remembered what the actual distances from the islands are.

I will supply them to-morrow morning and have them written on the table for you. I have got them somewhere upon my note, and I thought I had them in my head, but unfortunately I have not remembered them. Of course I could give the latitude and longitude, but I would rather give the actual distance. One distance is stated as 110 miles, but I will give you the others to-morrow morning. Of those seals six were females and one was a male. What was the condition of their stomachs? "empty", "empty", "fish-bones", "empty", "empty", "fish-bones", "fish-bones and a small cod". Now I ask whether that is the slightest corroboration upon which any Tribunal would come to the conclusion that these seals were to be regarded as going out for food. It is extremely probable at those later dates, certainly on the 23rd of August, when "fish-bones and a small cod" were found in the stomach of the female, at 110 miles that there was nothing to show or even to suggest that they were in search of food. If you will kindly look at the fourth column from the end, the only nursing females are those of the 6th of August, the 21st of August and the 23rd of August. Now what possible reason is there for coming to the conclusion that a seal found with milk in its breast on the 23rd of August, 110 miles from St. Paul's Island, has got a pup dependent upon her upon the island and that therefore the killing of that seal is to be considered as something which ought to be restrained by law. I ask the opinion of every member of this Tribunal who has ever had to deal with this question from a practical point of view. Of the two so called nursing females on the 6th of August and on the 21st of August, their stomachs were empty. But of the three nursing females the position is that two have nothing in them, the third has fish-bones and a small cod, on the 23rd of August, 110 miles away. And what is meant by nursing females for this purpose? The only way they can judge is that the milk is not dried up. There was no observation as to whether that milk was in the course of drying up or was not.

Now I call attention to Captain Hooper's table at page 217, and I want first to call attention, with all respect, to the absurdity of the argument that is based upon this table of Captain Hooper. I say "absurdity" with all respect, because one is accustomed to taking out averages and knows how averages should be taken. It is not a case of a man sealing and killing as many as he could, but it is the case of a man who killed a certain number of seals to get certain information.

Now what do they suggest within the 10 mile zone? You will notice they killed One old male, two young males, three nursing cows and three virgin cows and they calculate the percentage from that. Then take the 20 mile zone, one young male eight nursing cows and one virgin cow. That again might be a sufficiently large number, but still it is a very untrustworthy guide for the purpose of percentage. It is remarkable, at any rate that a very large percentage, if you are to rely upon the table at all, of nursing cows are found within the twenty mile zone.

Now we come to the 30 mile zone. What they find is one young male, and they put down 100 per cent for that. It is ridiculous to calculate it from that. Then the 50 mile zone was 1 young male, 1 nursing cow; and they put down the percentage of nursing cows at 50 per cent, because they happened to have shot not as many as they could shoot, but two only. Then the 100 mile zone, 1 young male and 1 nursing cow, and again they put down 50 per cent.

Then the 150 mile zone, 2 young males, one nursing cow; and the 200 mile zone 3 young males, 8 nursing cows, and 3 virgin cows; and from that table you are supposed to be able to form some sort of idea or estimate as to what is the percentage of these animals that are shot. Well, Mr. President, I speak with great deference to the mathematical ability and ingenuity of my learned friends. All I can say is that if they can deduce a reliable percentage from such a table as that, the United States has gone very, very far ahead of the Old Country in the matters of mathematics because nobody who has had anything to do with statistics in connection with animal life, or anything else, would think of calculating the percentage from such a number of killings or examination of the animals that were found.

Now let us come to the table as regards the food. That is at page 219, within 10 miles from the Islands all three are found without food. These are the nursing females only.

Lord HANNEN.—What are you referring to here?

Sir RICHARD WEBSTER.—The table opposite page 219, my Lord. Of course, I shall have to pick out each one for you if I have actually to find them; but perhaps I can give you the substance of the table and then I can test any one that is necessary. Within 10 miles from the Islands they found three nursing females. That you will find, my Lord, by turning back for a moment to page 217. Within 10 miles from the Islands they found three nursing females, all of them without food. Within 20 miles they found eight nursing females, all of them without food. If that proves anything at all—I do not think it does prove anything at all to be fair, it would prove the eight nursing females could get the food within 20 miles, but there is nothing to show if it was going or coming, and from the point of view of this grand statistical operation, it affords no guide. Between 20 and 30 miles they found no nursing females. At 50 miles they found one nursing female without any food, and if that is any proof at all, it is all the nursing females in that area did not require food, which would be absurd. Then 100 miles off they found one nursing cow without food; 150 miles they found one nursing cow with food, and within 200 miles they found eight nursing cows five with food and three without.

In all seriousness I ask the Tribunal if they had to draw any conclusion from such figures as those would anybody risk the life of a rat from any conclusion that could be drawn from them. Perhaps a rat's life is worth nothing, but take the life of a dog would anybody risk the life

of a dog upon the conclusions that could be drawn from such percentages as these. It is obvious unless you have information with regard to the actual condition of the seal itself and knew where it came from, and if it had a pup, or not or if the milk was drying up, you cannot.

If I were to argue upon certain isolated cases I could prove to demonstration they could within 20 miles get the food without going out, and further that only a certain proportion outside succeeded in obtaining food.

The whole argument is I submit untrustworthy, because you have not and nobody can get from the fact of shooting a seal here and there what I may call quantitative or qualitative information upon the points which the percentage are supposed to prove.

Now I ask to go to the body of the testimony, and I will take it from the United States abstract of evidence—the body of testimony supposed to prove this killing of nursing cows; and I desire to repeat and substantiate to the best of my ability the statements by the Attorney General which I believe are strictly true without exception, that there is no single witness who proves time, place or number of nursing females killed in Behring Sea, so as to enable you to form a quantitative estimate of what the amount of so-called destruction by that operation is. Would the Tribunal kindly turn to page 45 of the abstract of testimony. Of course I am not going to read the whole, though I am prepared to. I will read as many as are necessary, and I will begin, if you please, at the top of page 453 where it is taken more shortly.

We entered the Behring Sea through the Muckawa Pass about the 1st of July, and commenced hunting seals wherever we could find them, among which were a great many cows giving milk, which we killed from 30 to 150 miles from the Islands.

I need not point out there again you do not have numbers given at all, and the sole statement is, "Cows giving milk." You do not know if it is drying up or not. I hear, General Foster laugh. All I can say is that any-body who has any knowledge of this matter must know that the milk takes some weeks to dry up in these animals, and, therefore, there was no reason why the observation should be for the moment treated with derision.

A great many cows giving milk which we killed from 30 to 150 miles from the Islands.

Then the next is.

I have no exact information as to the proportion of male and female seals killed by pelagic hunters.

That does not carry it a bit further. Now.—

And when in the Behring Sea, we take seals from 10 to 120 miles from the Seal Islands.

Then the the next man.—

And the large proportion of the seals killed in Behring Sea are also cows. Have killed cowseal with milk in them 65 miles from the Pribilof Islands.

No statement when it was, or what number. If one were to judge fairly, one would think that was an exceptional case.

We came out of the Behring Sea in the latter part of August, and had caught about 1,700 seals between the Pribilof Islands and Unalaska. We caught them from 10 to 100 miles or more off St. George Islands.

How that bears on nursing-females, it is difficult to say. Then the next is.—

The seals caught along the coast after 1st of April are mostly pregnant females, and those caught in Behring Sea were females that had given birth to their young. I often noticed the milk flowing out of their breasts when being skinned, and have seen them killed more than 100 miles from the Seal Islands. I have seen live pups cut out of their mothers and live around on the decks for a week.

For all we know, and for all the affidavit tells us, that may apply to Behring Sea in the month of May; that may apply to Behring Sea in the month of June, that may apply to the catching of females in Behring Sea within a few miles of these Islands; neither date nor distance is given.

I was in the Behring Sea in 1889 on the schooner "James G. Swan", but did not use shot-guns. Most all the seals we caught were cows giving milk.

Again, no statement of place, and no statement of number.

We entered Behring Sea in the middle of May, and captured 300 while in there. Most of those were mother seals with their breasts full of milk.

Why, Mr. President, if this had been something done close to the islands, within 5 or 10 miles off, and they were the seals that had gone out, as the evidence shows clearly they do go out from time to time, to play in the water near the islands, it would be nothing remarkable, and would prove nothing.

We did not capture any gravid seals in the Behring Sea. Nearly all the seals taken in Behring Sea were cows in milk. We captured a few young seals, in the sea, of both sexes.

Then

I hunted in Behring Sea in 1889, that being the only year I ever went to that sea and hunted seals with spears, about 70 miles south-west off the islands, and our catch was nearly all cows that had given birth to their young and had milk in their teats.

No statement of how many they caught, and no statement of when it was. I would read every one of these extracts if necessary.

The PRESIDENT.—Some of them have a statement as to dates.

Sir RICHARD WEBSTER.—There is none that I have passed. I have read consecutively, and none combine all three elements of date, number and place.

The PRESIDENT.—There is Niels Bonde.

Sir RICHARD WEBSTER.—I read that I think.

The seals caught along the coast after the 1st of April are mostly pregnant females, and those caught in Behring Sea were females that have given birth to their young. I often noticed the milk flowing out of their breasts when being skinned, and have seen them killed more than 100 miles from the seal islands. I have seen live pups cut out of mothers, and live around on the decks for a week.

Neither date nor number given I have not intentionally passed any one; I thought I read the whole of that page. I have only one or two more observations to make upon this head, and, as I do not want to trespass unduly upon the Tribunal, perhaps they will keep till to-morrow.

Lord HANNEN.—I understood you to say that you passed Niels Bonde, and said it had nothing to do with it?

Sir RICHARD WEBSTER.—Well, if I did, my Lord, I did it unintentionally. What I did mean to say was, that Niels Bonde had nothing to do with it so far as pregnant females were concerned. Perhaps I read it too fast; I did not know that I had passed it—I had no inten-

tion of passing it; I meant to read every one. What I meant was, those caught in Behring Sea have no date given, no distance given, and no number given.

As I have some more observations to make on this particular Table, and it is an important summary of the evidence and tells very strongly in support of the view presented by my learned friend, Sir Charles Russell, and myself perhaps you would allow me to continue this to-morrow morning.

The PRESIDENT.—Certainly.

[The Tribunal then adjourned till Thursday, the 15th of June, at 11.30 o'clock.]

THIRTY-NINTH DAY, JUNE 15TH, 1893.

Sir RICHARD WEBSTER.—I promised, Mr. President, to give you those distances the first thing this morning. On page 242 of the United States Counter Case, the distances from the Islands to those seals referred to in Mr. Alexander's tables were taken; the first two on the 6th of August which are female seals, one nursing and one virgin, which were taken empty, were within the 20 mile radius; the next one on the 12th of August was distant about 40 miles from the Island, that was a virgin female with fish bones in it; the next one on the 13th of August, also a virgin female, empty, 180 miles from the Island; the next two, which are on the 21st of August, empty and fish bones, 90 miles from the Island; and the last one is stated in their own statement to be 110 miles.

Mr. President, I was referring last night to the collated testimony which is put forward for the purpose of showing the amount of females in milk killed in Behring Sea. I had finished page 453, and I am not going to read every extract; I will simply remind the Tribunal again of my point and will read any extracts that seem to bear on that or will, of course, deal with any if any are called to my particular attention. Our point is, it is impossible from this table or from the affidavits themselves to gather how many seals were killed in milk, the place they were killed, or the times when. Many of the affidavits are defective in two out of three particulars, and, so far as we have examined them, no one contains them all.

I will read a few specimens and then I will pass to one or two that are more important in our submission. Take page 454 of the collated testimony Thomas Brown:

> We entered the sea along about the first May and caught between 600 and 700 seals from 30 to 50 miles off the seal Islands and 4 out of 5 were females in milk. I saw the milk running on the deck when we skinned them.

I call attention to the date which so far as it is of any importance will support an argument which I have already addressed; that is somewhere "about the first of May." Then Charles Campbell:

> Have killed cows with milk about 60 miles off the Pribilof Islands.

Then John Cantwell:

> 80 per cent of the seals shot in Behring Sea from July first to September 15 are females most of which have given birth to their young and are mostly caught while feeding at various distances from land.

Charles Challall:

> At least 7 out of 8 seals caught in Behring Sea were mothers in milk.

Then Circus Jim, I suppose he is an Indian:

> While in the sea I caught a great many cow seals that were giving milk. Most all seals we caught in the sea were giving milk.

You will notice neither date nor place nor number given.

Now I want to call attention to Claplanhoo because I have to make an observation about him, and I desire to read Claplanhoo's evidence,

and make an observation which applies to a good many witnesses in this case, that is with reference to the absence of cross-examination. This is the first Indian I have read I believe, I mean at any rate the first that I have noted, and he says.

In 1887, about the 1st of June, I went into the Behring sea in my own schooner, the Lottie, and hunted about 60 miles off the islands, and secured about 700 seals, most of which were cows in milk. These cows had milk in their breasts, but had no pups in them. I returned to the Behring Sea in my own boat, the Lottie, in 1889, and also in 1891, and sealed all the way from 100 to 180 miles from the St. George and St. Paul Islands the catch of these two years were of about the same character as those caught in 1887, and were mostly females that had given birth to their young, and were in milk.

I again note, in no one of these questions does attention seem to have been drawn to the question whether the milk was drying up or not. These are Makah Indians, and I need not remind the Tribunal that a great deal depends on the intelligence of these men and the way the questions are put, and what is now written down in a consecutive affidavit may not really represent the actual meaning he intended to convey, but requires to be tested. That being known I will ask the Tribunal to turn to page 176 of the second volume of the Appendix to the Counter Case.

The PRESIDENT.—It appears that this Indian was the owner of a schooner.

Sir RICHARD WEBSTER.—He was the owner of a schooner. I did not mean to note that in passing, but it has an important bearing on a matter which has been referred to.

The PRESIDENT.—You mean on the Indian sealing.

Sir RICHARD WEBSTER.—Yes, on the Indian sealing. There are many instances of Indians owning the schooners and going out in them. Therefore, it is quite a mistake to suppose that they are persons who only hunt in canoes. I merely refer to this in order that I may at once tell you what passed in reference to the cross-examination of witnesses like this, and I therefore call your attention to page 176 of the second volume of the appendix to the British Counter Case.

That is the evidence of Mr. Belyea, and he says:

That on the 29th day of November last I went to the Indian village of Neah Bay, in the State of Washington, United States of America, on the Dominion of Canada steamer "Quadra", for the purpose of securing the evidence of the Indians there for use before the Arbitration on the Behring Sea Fur-seal question.

That I took with me as an interpreter one Andrew Laing, and immediately upon arrival at Neah Bay I sent Laing on shore to enquire of the Indians whether they were willing to give the evidence. On his return to the "Quadra", he informed me that the Indian Agent there had forbidden the Indians to give any evidence to the British side without his permission, and that the Indians were willing to give evidence if the agent would permit them.

That I immediately went on shore and called upon the Indian Agent, one John P. M. Glynn.

Mr. John P. M. Glynn was the gentleman who witnessed the greater proportion of the affidavits that had been sworn by the Indians on behalf of the United States.

I told him what I wanted. His reply in effect was that the Indians had an idea that the sealing on the coast would be stopped and would not say anything to me as it might injure them. I told him I understood that to be one of the objects of the American Government, and if the Indians wished to prevent it they would be acting in their own interest to give me their views. He then said the Indians had already given evidence to the officers of the United States Government for use on the Arbitration, and he did not consider it fair to either the Indians or the United States Government to have them examined by the British. I told him I was willing to take the statements of the Indians in his presence, and he then said he refused under any circumstances to allow the Indians of his Agency to give me any evidence about

seals or seal-hunting. He further said that he did not intend to subject the Indians to an Examination by the British side as they might stultify themselves. He said the Indians were easily misunderstood, and quite as easily induced to say things that were not true. Finding it useless to prolong the interview, I left him, and went up to the Indian village.

And then he refers to a conversation which is not important with the Indian who indorsed that which has been stated, that he could not give evidence or answer any questions without the permission of the Agent. That is confirmed by Andrew Laing, the interpreter in paragraphs 3 and 4 of his affidavit.

That I went back to the "Quadra" and told Mr. Belyea what Peterson said.

Peterson was one of the Indians.

Mr. Belyea at once went on shore and saw the Indian Agent, one John P. M. Glynn. I went with him and was present and heard all that passed between him and the Agent, except for a few minutes at the close of their conversation. I have read what Mr. Belyea says took place then, and it is true. I remember the Agent telling Mr. Belyea that he would not allow the Indians under any circumstances to give evidence to the English. This was in reply to an offer of Mr. Belyea to take the evidence in Agent's presence.

That and the declaration of General Jackson on the next page bears upon the same matter, but I only mention it in order to respectfully caution the Tribunal, though I do not suppose any caution is necessary, against accepting on any questions of per centage or statements of this kind, affidavits taken not only with no opportunity of cross-examination, but when cross-examination by a respectable gentleman, a member of the Bar sent out for the purpose has been refused. I am only suggesting the Tribunal will do that which every Court would do for itself, having the matter brought to its notice—accept any such testimony with extreme caution and except in so far as it was obviously corroborated, would not consider it entitled to special weight.

The PRESIDENT.—Do you lay any responsibility on the United States for the behaviour of these Agents.

Sir RICHARD WEBSTER.—Well, I do not suppose that the United States representatives would wish that a thing of that sort should for a moment take place. I was only referring to the evidence, and I hope you will understand that I make no charge of any sort or kind against the United States. I do not suppose for a moment they knew anything about it, but what I do say, is, and what I think I am justified in saying, is, that evidence taken under such circumstances is or should be of very slight weight before any Tribunal.

We are dealing, you must remember, with very uneducated men. They are speaking in a language not their own, which must have been interpreted in a great number of cases. They are not able to read or write; a large number make their mark, and it is taken in the presence of Mr. McGlynn, who objects to them being questioned. I say no more than that.

The PRESIDENT.—Would it not have been wise of the English Government to apprise the American Government that they were sending a man out for the purpose of cross-examination?

Sir RICHARD WEBSTER.—Well, Sir, that was not our contention; I am obliged to you for that suggestion. We had not seen these affidavits. They were only disclosed to us in September, 1892.

The PRESIDENT.—And this is in December, 1892.

Sir RICHARD WEBSTER.—Well, this gentleman, not knowing about the particular people, simply goes there for the purpose of getting evidence, that is to say of seeing Indians. He does not know the partic-

ular individuals, but all the Indians who are there have been examined by Mr. McGlynn, or in his presence, and this objection is taken. Of course, it is entirely for the Tribunal, but I do not think this ought to be made in any shape or form a charge against the United States Government, and I hope you will understand that I make no such charge; but I do say that, when we have to weigh the value of the testimony, it is a circumstance that the Tribunal will take into consideration, and I press it no further than that. Mr. Tupper reminds me that we had not the slightest reason, till Mr. Belyea got there, to anticipate that there would be any difficulty. The United States had examined the Indians on the British Columbian coast all along, and no hindrance had been put in their way to examine any Indians; and when this happened it was a complete surprise to Mr. Belyea, and it would not have been possible to make any effective remonstrance. But I must not be misunderstood, Sir, and I am sure that the Tribunal will not misunderstand me; I ask them to take it from me that my criticism only goes to the weight of the testimony, and I am entitled to use it for that purpose and I am sure the Members of the Tribunal who are acquainted with those matters will entirely agree.

The PRESIDENT.—Was this Indian, Claplankoo, who had a schooner of his own, a British or a United States Indian?

Sir RICHARD WEBSTER.—I think he was a United States Indian. It is true that his affidavit is not one that Mr. McGlynn took; but the very next one on page 383, if the Tribunal will look at the United States Appendix beginning at page 377,—that is volume 2 of the Appendix to their Case, and I am only digressing to answer your question, Mr. President, and to dispose of the matter if I can,—you will see that the first affidavit is by Bowachup. He was a marksman, and the witnesses were McGlynn and Gay. The next is by Peter Brown, who also makes his mark, and McGlynn was the witness. The next is by Landis Callapa, also a marksman; you know the meaning of that, of course, Mr. President:—That is, that he cannot write and naturally cannot read this language. Mr. John McGlynn witnesses that. Then, on page 380, he witnesses Circus Jim. He does not witness Claplanhoo; probably I should to have made the observation with reference to Circus Jim. Then Frank Davis, also a marksman, is witnessed by McGlynn; Jeff Davis does not appear to be Ellabush, on pages 385 and 386, is also a marksman, a Makah Indian, and is witnessed by McGlynn. Alfred Irwing, another witness, witnessed by McGlynn. Ishka, page 388, also witnessed by McGlynn. Selwish Johnson, page 38, also witnessed by McGlynn; James Lighthouse, page 390 also witnessed by McGlynn; Osly, page 391, also witnessed by McGlynn; Wilson Parker, page 392,—I only refer to these who are marksmen,—witnessed by McGlynn; John Tysam, page 394, also witnessed by McGlynn; Watkins, page 395; Charlie White, page 396; Wispoo, page 397; Hishyulla, page 398; and Thomas Zolnoks, page 399.

Now the language that those Indians are supposed to have used is of course language not their own—their actual words cannot be, and I do not suggest that it is not a true representation but of all testimony or evidence that desires to be and ought to be tested by crossexamination that is the class of evidence to which the test can be most usefully applied.

I mention that because it is not to be assumed against us, the whole of this evidence would remain as it is, if the opportunity had been afforded of finding out what these men's real meaning was. The evidence taken by another group of Indians, which I think was in Van-

couver Island, was tested. It was not taken by Mr. McGlynn and when a representative of Great Britain did come to examine those witnesses it is found, and is found in the Appendix in a very remarkable way that they go back from their previous statements. I only bring that before the Tribunal in order respectfully to impress upon them the importance of receiving *ex parte* testimony of these men, uncrossexamined too, with a great deal of caution. I go back to pages 335 and 336. If the Tribunal indicate that I ought to read the whole of these, I will, but I think I have sufficiently indicated my criticism. I should like to refer to the journalist, because Mr. McManus was a gentleman quoted by Mr. Coudert as a witness whose testimony might have been of some weight, I call attention to it because it is obviously put in a sensational and a journalistic way.

Tuesday the 25th August rain in morning. Boats and canoe out at half past 9 o'clock; out all day (returning to dinner): Result: first boat, two seals reported, wounded and lost five; seals said to be shy and wary, and not so numerous as formerly; attention called to cow seal being skinned (which I had taken for a young bull). The snow white milk running down blood-stained deck was a sickening sight. Indian canoe, one seal, total, 3 seals; 2 mediums and 1 cow. Wednesday 26th August, cloudy morning, seals floating round schooner. Boats and canoe out all day. Result: first boat, 1 seal; second boat, none; Indian canoe, 10 seals; total, 11 seals; 8 cows in milk and three medium Skipper in first boat blamed the powder. Second boat said it was too heavy and clumsy for the work skipper reported having wounded and lost 7, and the men in second boat 9 ditto, 16 in all. Skipper said seals not so numerous as formerly, more shy; also blamed the powder. Evidently a great deal of shooting and verv few seals to correspond. Thursday 27 August, seals to all appearances very scarce, species being exterminated, so to judge from the skipper's remarks. Weather fine and clear. Boats and canoe out; returned at noon, consequence of rough sea. Result: first boat, 1; second boat, none; Indian canoe, 2 seals; total, 3 seals. Again in favour of Indian spear. Powder blamed again. Tired of such excuses. So far have not found one word of truth in anything I've heard previously about open sea seal-hunting.

Friday, 28 August, rain and heavy sea in morning; cleared in afternoon; boats and canoe out in afternoon; returned at 6 p. m. No skins although a great deal of shooting going on first boat reported having wounded and lost three seals; blamed powder. Poor powder. It takes judging from the number of shots fired, about a hundred to secure one seal.

Saturday, 29th August, ship's cook brought down from deck a large cow seal at 40 yards rise. Boats and canoe out all day; fine, clear, balmy weather; Aukatan Island in sight. Result: first boat three seals; second boat, three seals; cook, from deck, one; Indian canoe, ten; total catch, seventeen seals, greater proportion cows in milk; horrid sight, could not stay the ordeal out till all were flayed. A large number reported as wounded and lost. According to appearances slaughter indiscriminate.

It is quite clear that Mr. McManus is recording this in the way in which journalists record these things, putting a very considerable amount of colour into it, but I want to call attention to the fact that no attention is paid to what was the actual condition of these females on the 29th August from the point of view of seeing whether in the glands themselves though there was milk in the breast, the milk was drying up. I do not suggest it was untrue and have never done so, but I point out from the point of view you have to consider which is that *of necessity*, the incident referred to in this kind of language in order as far as this witness was concerned to produce prejudice, does not guide you or enable you to form a judgment.

Then this evidence goes on at page 93, and I say that desiring to read it as fully against myself as it can be read I submit that it affords no guide at all from which any quantitative deduction can be drawn as to the number of nursing females and the females with pups dependent upon them that are taken in any given season or from any given

amount of killing. Would you look to page 93 almost the middle of these entries.

W. H. Williams. Thousands of the female seals were captured by the pelagic hunters in Behring Sea during the season of 1891, the most of which had to be secured quite a distance from the rookeries, owing to the presence of armed vessels patrolling the sea for miles round the Islands, and that the slaughter of the seals were mostly females was confirmed by the thousands of dead pups lying on the rookeries starved to death by the destruction of the mothers.

I am sure the Tribunal as they already know the importance of it will not fail to notice that passage in connection with the inference drawn by a gentleman who concludes at once from the fact that a large number of pups being found dead in 1891, that their death was occasioned by the mothers being killed at sea.

Now I pass from that criticism on that evidence and again repeat if it were thought necessary I would certainly go through the whole of these pages though I trust I have sufficiently brought my point before the Tribunal, and I would now ask them to look at testimony which shows that this question of the condition of the milk in the breast is one of considerable importance. I would ask them to take the 2nd volume of the Appendix to the British Counter Case at pages 22 and 23. I cannot help thinking that this is just one of the matters upon which the information before the Tribunal is by no means as full and accurate as it ought to be for the purpose of coming to what I call a final conclusion upon the matter. In the summary at page 22 I find:

Statement relating to the taking of Female seals in milk J. D. Warren says: Up to the latter part of July I got a few Seals [in Behring sea] showing signs of milk when skinning them. I do not think these females had ever been on the islands, but had lost their pups at sea. I never saw a female killed in the sea having much milk in them.

Micajah Pickney, master of the Henrietta, seized in Behring Sea in 1892, States that of 420 seals taken by him about one-fourth were females who had had their pups and the milk had dried up. This was between the 3rd August and the 4th September.

W. O. Hughes, when in Behring Sea in 1891, got after the 1st August hardly any cows that showed signs of milk. He believes they had pupped on the island and that the milk had dried up.

Mr. Justice HARLAN.—Do the original depositions show the locality?

Sir RICHARD WEBSTER.—I will look.

Mr. Justice HARLAN.—I would not have you stop to do that.

Sir RICHARD WEBSTER.—It is not stopping at all, Sir, because I have them all noted. It is page 100. Hughes was a fur seal hunter.

In 1891 I was master of the "Katherine", and in 1892 I was master of the "Carmolite".

Last year in the "Katherine" I got about 1,500 seals, of which 191 were got on the coast, and the remainder in Behring Sea.

Last year the coast catch was about half females, and of these one half were with pup. In Behring Sea I got most of my catch about 100 miles westward of St. George Island. Over half the catch in the sea were females, none with pup; but in the month of July about one third of the females were breeding cows showing milk. After the 1st August hardly any cows got showed signs of milk. I believe they had pupped on the islands and the milk had dried up.

And then he goes to the next year, 1892, and he thinks on the coast—I am coming to that later on—less than half of the females this year were with pup. You will notice that he was sealing from the 25th April to the 10th May, and that was outside Behring Sea. I think that which I have read gives you all the information you require. Then I go back to page 22.

Joseph Brown states that after the 15th July a few cows in milk were got in Behring Sea, but as the season grew later very few of these were got. "In the sea we cannot tell whether a cow is barren or not".

James Stiteman found in Behring Sea that about two-thirds of the females taken were breeding females showing milk—some times only a trace, nearly dried up—others with a good supply.

It cannot be said that that is not evidence which is given fairly. Some statements tell, of course, against my contention, but I call attention to all that have a bearing on this.

Then.

Captain George Scott has taken in Behring Sea many females in which the milk had just about dried up.

Michael Keefe states that his vessel the "Beatrice" got 900 skins in Behring Sea in 1890, between the 20th July and the 24th August. Two fifths of these were females "not with a supply of milk, but a good many showing milk dried up". In 1891 his vessel got 500 seals in Behring Sea, of which nearly half were cows. Most of the cows showed dried milk in their breasts.

Of course, you are aware it is no part of my Case to deny that a large proportion of the seals killed are females. It must be so I am going to deal with that part of the case when I argue in answer to the contention, that which I respectfully say is an unwarranted contention, that it is a crime moral and illegal to kill the female seal. I will show the justice of that when I deal with that part of the Case by itself. I merely note in passing that these witnesses state in one point of view that which may be said to be against my contention, that a large proportion, some of them a half, and some not so many—say two-fifths were females. If it be a moral sin to kill females, why these witnesses prove it, but my learned friends need not think that I am afraid of the contention that they put forward. I protest, having regard to what we know about seal-life, and having regard to what we know must take place, that it is beyond all reason to contend that it is a crime to kill female seals in the way in which my learned friend, Mr. Coudert in very exaggerated language described it.

John Coburn says that in Behring Sea in the early part of the season some of the females would be in milk, but later on the milk would be dried up.

George Wells was in Behring Sea in 1890 and 1891; about two-thirds his catch were females, of which a few were in milk, but the most were dried up. After July all the cows are dry of milk. It is only in the first three or four weeks in July that cows in milk in any noticeable quantity are got.

I should like to see, if I can, when that man sealed. It is at page 107. He says 40 or 45 miles from the Pribiloff Islands, in one year, in 1890—I do not think he states what distance he was from the Islands in 1891. There is a case on which the evidence would correspond with what you would expect from natural causes; during the earlier time there might be more females with milk in them, and after that time, for a considerable period, the milk would be drying up for two or three weeks.

Then.

William F. Roland states that of the females taken by him in Behring Sea, more than half were in milk of varying quantities, from a good supply to a few drops in cows about dried up. It is only in the early part of the season in Behring Sea we get cows in milk, and before the end of the season they are about all dried up.

Arthur M. Roland says that in the first part of the season of 1891 he got a number of cows in milk, but that after the 1st August the cows were nearly all dried up.

John Matthews took in Behring Sea, in 1891, a very few cows in milk; some of them nearly dry.

Andrew McKil says: up to the 1st August [in Behring Sea] the hunters get cows with milk in them, but after that date the milk cows began to disappear, and very soon none are got in milk. By the 20th August the milk in the cows had all dried up.

James Gandin states that females taken between the 25th July, and the 25th August in Behring Sea were nearly all dry, as if they were through suckling their pups.

The next three refer to the coast catch, and, therefore, do not have a bearing upon what I am now dealing with. Then the last but two:

George Dishow: In Behring Sea I never got any cows with young. A few cows there would be in milk.

Otto Buchholz. In 1890 I sealed in the Behring Sea in July: I got a few female seals in milk. We sealed 35 to 50 miles from the Pribilof Islands.

Now, of course, if my learned friends are correct in the contention in respect of which we are told by Mr. Phelps that we are going again to hear arguments in respect of—that on general principles the whole of this vast area is to be reserved for the United States, this argument bears out their case; but from the point of view of showing you that a large proportion of seals nursing their young are killed outside the radius of 30 or 40 miles, I submit, for the reasons which I hope the Court will be kind enough to take into their consideration, that that evidence offers no satisfactory test or guide. I must remind the Tribunal, without repeating it, of the remarkable evidence as to the female seals remaining on the rookeries for a very considerable time, and to the utter absence of the ordinary signs of food, (and I go as far as saying, putting it from a naturalist's point of view, it is utterly inconsistent with the females taking any substantial amount of food while they are nursing)—you have no excrement of any sort or kind on any of these rookeries; and I put it, after you know from overwhelming testimony that, from the beginning of July, or the middle of July, I will put it, down on the east side, the pups are spreading away along these islands, it seems to me strongly to corroborate the view that the pups after that time cannot be dependent upon their mothers, and I shall not fail to draw attention incidentally to one or two important facts bearing on that contention.

The PRESIDENT.—You suppose these seals were taken fishing and feeding, and would not return to the islands.

Sir RICHARD WEBSTER.—As I have already called to your attention with regard to those who were examined, a very small proportion only of them had any fish in them, and there is no evidence therefore, or very little evidence—I ought to put it more correctly that there is only evidence that a few of these were actually feeding. With regard to those that are to be found after the 20th of July and through August, my contention is that they are females that have, practically speaking, done with the islands, and that are not going back to them. Again with regard to those taken within short distances, it is possible they have pups dependent on them, but in order to be satisfied of that you must have some satisfactory solution with regard to the other circumstances, and the condition of the rookeries, which I respectfully pressed upon the attention of the Court yesterday. The piece of evidence to which I referred, with reference to that which is supposed to be conclusive, is in the Counter Case only, in Mr. Stanley Brown's evidence, at page 387.

You will remember that reading yesterday from page 386 I reminded you that qualifying his evidence of the previous year—I had not mentioned that fact before—Mr. Brown, when he made his affidavit in 1891 stated that the females left within a few days, and I say this as I have said on previous occasions, I am sure Mr. Brown, as far as he observed anything, would tell it accurately, if he thought it material, but at page 15 of the second volume of the Appendix to the Case, in his first affidavit, Mr. Brown had stated.

For the first few days, and possibly for a week or even ten days the female is able to nourish her young, or offspring, but she is soon compelled to seek the sea for food.

It is no disrespect to Mr. Brown to remind the Tribunal that till his visit in 1891 to these Islands, he knew nothing about the seals at all. In 1892, he makes a further affidavit, and he says.

I was able to satisfy myself that females begin to go into the water from 14 to 17 days after first landing.

It is a remarkable extension of the previous opinion showing how untrustworthy first impressions are, because the "week or ten days" has become "from 14 to 17 days". The point is, the first going into the water.

The next fact to which Mr. Brown speaks is to be found at the bottom of page 386:

The movements of females can also to a certain extent be well observed by their appearance after giving birth to their pups, after fasting, and after gorging themselves with food. After the birth of the pup, and after remaining upon the rookeries even for a few days when the period of coming from and going into the water has been entered upon, the mother has a very decidedly gaunt appearance, in strong contrast to the plumpness of pregnancy or fall feeding. After feeding at sea they come ashore again well rounded out. So marked is this that I have repeatedly been misled by mothers in such a condition, mistaking them for pregnant cows, and have discovered my error by seeing her call her pup and suckle it. If I had any doubt in my mind as to the cows feeding at sea it was dispelled by an examination of three cows I shot at Northeast Point on July 25th, 1892. Two "sunburnt" cows were first killed and their stomachs were found to be empty.

Not an unimportant fact, that as late as the 25th of July, 1892, two sunburnt cows, by which he means cows frequenting the Rookery, were killed in order to try to solve this question, and were found to be empty.

Another was shot just as she came ashore and her stomach was gorged with half digested codfish, which was identified by Mr. C. H. Townsend, an expert of the United States Fish Commission. A dissection was made of this seal, and the udder, which extends as a broad thick sheet at the centre, but thinning out towards the edges, over the entire abdominal portion of the cow and well up to the fore flippers, was so charged with milk that on removing the skin the milk freely flowed out in all directions, and previous to skinning it was possible with but little effort to extract a sufficient amount to enable me to determine its taste and consistency. A large supply of food is necessary to furnish such an abundant amount of milk. I have no doubt that a well-developed mother seal could yield between a pint and a quart of milk in the first 24 hours after landing from a feeding expedition, and with such rich fountains to draw upon it is no wonder that the voracious pups increase during their residence upon the island not less than four times their weight at birth. And it is equally certain that without such a constant supply of nourishment it could not make such a rapid growth as it does.

With all deference to Mr. Stanley Brown's opinion, I do not wish to discount it unduly, he is a geologist, and I have no doubt the study of that enables him, to a certain extent, to follow out the matter closely; but, when we have to deal with this opinion and the facts proved, it amounts to this, that there was one seal, as late as the 25th of July out of three,—two being killed with no food and one that had some (whether the seal had a pup or not upon the Islands, we are not able to tell),—but it is obvious that Mr. Brown could not ascertain every fact about it. It is not a matter which is in any way sufficient to enable this Tribunal to overset and disregard the body of testimony to which I called attention in regard to this matter yesterday.

Now, I come to that to which I ask the close attention of this Tribunal, and that is a petition which I have never made unsuccessfully yet. The United States believed, in 1891, that they had conclusive proof that pelagic sealing caused the death of the seals, and accordingly they stated that the death of the pups in 1891, to the amount of several

thousands on the rookeries, was due to pelagic sealing. This is a part of the case touched upon only in outline by my learned friend, the Attorney General, but is of so much importance, and admitted by the United States Case to be of so much importance, that I do not make any apology, for bringing it to the attention of the Court.

The facts are these. In 1891, upon two certain particular rookeries, an extraordinary and abnormal death of seals occurred. In 1892, when there was no pelagic sealing in Behring Sea, and at a time when the same cause could not have produced the same effect, a greater death of pups on the same place is discovered,—on particular spots on the Island; and, if I establish that, I submit to this Tribunal, and subject to any argument that may be heard on the other side, that the state ment on which the United States Advocates have pinned their case is completely demolished; I will use no stronger expression than that.

Now, first, that you may kindly follow me, would you be good enough to take the Chart n° 2 of the United States Case. You will notice there St. Paul's Island and, beginning at the top, there is the Northeast Rookery; then there is the Little Polavina Rookery; then the Polavina Point Rookery; then Lukannon Rookery; then Ketavie Rookery; then Garbatch Rookery; Reef Rookery; Lagoon Rookery; Tolstoi Rookery and Zapadnie Rookery,—(I may say on St. George's Island, there are the Great East, the Little East, the North Rookery, the Starry Arteel, and the Zapadnie):—in all 8 or 9; by far the largest being the Northeast Point Rookery. The only places in which the excessive mortality of pups on the Rookeries occurred are at Tolstoi Rookery, both in 1891 and 1892, which is just to the left of the village, a little above and Polavina Point Rookery, which is the one underneath Little Polavina.

If I am not asking the Tribunal too much, I will ask them to put a mark against those two places.. They will find that the testimony upon both sides, both the United States and the British, is that the Rookeries upon which an abnormal quantity of dead pups were seen in either 1891 or 1892 are those two; and they were seen in the same places in the two corresponding years. I have said, and my words may be presently criticised, I will prove this from the United States Case as well as our own.

I will also mention—and I should like it to be noted now, you will see just above the words "Reef Rookery" a little bay I shall be able to show you by testimony also coming from the United States that some seals killed by surf evidently were observed in the year 1890 by Mr. Palmer in 1892 in another bay outside Zapadnie by Mr. Macoun just by the South-West bay it is called, and I shall show you that that, has nothing to do with this extraordinary mortality upon the rookeries.

Now if I make my point good, nobody will deny it is of very great significance with regard to this argument. I will only remind you of what Williams says in his affidavit. He stated that large numbers—thousands, had been been killed at the sea, the mothers having been killed, and that was proved by the dead pups found in 1891, he drawing the conclusion from what he believed to be, I have no doubt, the facts at that time. First, I ask, if this is true, is it not sufficient in itself to dispose of the contention that pelagic sealing could have been the cause. Does anybody suggest that the action of pelagic sealers would differentiate between Ketavie Rookery or Polavina or Lucannon and Polavina Point or Garbatch, or in fact the seven or eight other rookeries in many cases for the largest is the North East extending for some three miles all the way round and admitted upon the United

States statement to be the largest of the rookeries—can anybody suggest any reason why, if it was pelagic sealing, those pups should have died on those two rookeries alone and in those two places?

Senator MORGAN.—You mean the abnormal death.

Sir RICHARD WEBSTER.—Of course, I do not deal with the normal death.

Senator MORGAN.—Not with the normal death at all.

Sir RICHARD WEBSTER.—I will point out what the normal death is.

Senator MORGAN.—We get then half of the abnormal death.

Sir RICHARD WEBSTER.—Yes, because what happened in 1891, everybody agrees is something entirely abnormal. It is suggested after this case began for the first time that this abnormal death of pups had been noticed gradually increasing from 1884 to 1891. I shall ask the Tribunal to come to the conclusion that that is not only the fact, but can be shewn to be so from the United States own evidence. Be it as it may, it will make no difference to my point: it will be as good to me to show that pelagic sealing cannot have been the cause of the abnormal death of pups to which I am referring.

That I may not have to go back to the map, you will follow that argument with reference to the Island of St. George about one-third or one-fourth of the size, having regard to the seals killed in reference to its importance. It is, of course, as you already know, common ground that no abnormal death of pups has ever been noticed on the Island of St. George. The argument which I have addressed to the Tribunal pointing to the selection of rookeries on St. Paul Island applies equally as between St. Paul and St. George, and I only mention it for the purpose of enforcing what I have said. Now the otherside knew perfectly well this was a most important point. It was made so in the original United States Case. It was made so in the British Case. It was made so in the British Counter Case; and I will not leave any reference untouched as far as I can. How has this been dealt with up to the present time? I read from page 706 of the Shorthand Note of my learned friend Mr. Coudert's speech.

Now with regard to the question of dead pups the learned Tribunal will find that considerable space is devoted to the examination of that question and the origin of their death. Of course, these animals will die, as all animals will, and a certain portion of them would perish under the best circumstances, but when there is a large loss, and that loss is coincident with the death of the mothers, I do not think that we need to go into any careful examination or balancing of testimony. If we find a man with a bullet through his brain lying on the ground, even in the hot sun of July, we assume that he was killed by that bullet, and not by the sunstroke.

That is very fine, but it does not seem to me with deference to have much bearing on the point.

And so when we find, at a certain period of the year, that a large number of pups die on the islands, that they are emaciated, and when they are opened there is nothing in their stomachs, or nothing but a very little milk; and you are shown at the same time that the mothers upon which they depend for sustenance have been killed—unless something can be shown that *prima facie* appears to account for the death outside these natural causes, we must assume that they die of starvation, and that is what the testimony undoubtedly shows.

And that is the whole argument that has been addressed to this Tribunal upon a matter which is vital and has been made vital in both the printed Cases in relation to this question of the death of pups.

Now will the Tribunal, as I have asked them already follow me somewhat carefully in regard to this matter. The case now made by the United States is that there had been a gradual, but observed, abnormal increase of dead pups right away from 1884 to 1891—culminating in 1891, and they have produced 4 or 5 affidavits all taken in the year

1892 of people who were resident upon the Islands in the years 1885 and 1886 to say that they noticed the increase of dead pups. They do not give the place. They did not localize where these pups are found. They make no connection of any sort or kind between the two particular rookeries to which the evidence is most particularly addressed on both sides: they simply make the statement *ex post facto*, their affidavits being taken in April 1892, that they remember that during the years 1884 to 1890 they found that there were more of these dead pups than usual. You will find that collected together in page 466 of the Collated Testimony. The first is Clark:

Dead pup seals which seem to have starved to death grew very numerous in the rookeries these later years.

That is up to 1889.

And I noticed that driving the batchelor seals for killing, as we started them up from the beach, that many small pups half starved, apparently motherless had wandered away from the breeding grounds, and became mixed with the killable seals. The natives called my attention to these waifs saying that it did not use to be so, and that the mothers were dead, otherwise they would be upon the breeding grounds.

That is an affidavit made in the May of 1892.

Then Hansson who made his affidavit on the 30th April says:

There were a good many dead pups on the rookeries every year I was on the island.

He was there from 1886 to 1891.—

And they seemed to grow more numerous from year to year. There may not, in fact, have been more of them, because the rookeries were all the time growing smaller and the dead pups in the latter years were more numerous in proportion to the live ones.

Then Mr. McIntyre:

The seals were apparently subject to no diseases; the pups were always fat and healthy and dead ones very rarely seen on or about the rookeries prior to 1884. Upon my return to the islands, in 1886, I was told by my assistants, and the natives that a very large number of pups had perished the preceding season, a part of them dying upon the islands and others being washed ashore, all seeming to have starved to death. The same thing occurred in 1886 and in each of the following years to and including 1889. Even before I left the islands in August 1886, 1887, and 1888, I saw hundreds of halfstarved, bleating emaciated pups wandering aimlessly about in search of their dams and presenting a most pitiable appearance.

Then Morgan is the last of them:

But facts came under my observation that soon led me to what I believe to be the true cause of destruction. For instance during the period of my residence on St. George Island, down to the year 1884, there were always a number of dead pups, the number of which I can not give exactly, as it varies from year, to year and was dependent upon accidents or the destructiveness of storms young seals do not know how to swim from birth, nor do they learn how for six weeks or two months after birth, and therefore are at the mercy of the waves during stormy weather, but from the year 1884 down to the period when I left St. George's Island—

I hope the Tribunal will notice this because it is agreed that there is no abnormal pups in St. George's Island in 1891 or 1892—

there was a marked increase in the number of dead pup seals amounting perhaps to a trebling of the numbers observed in former years, so that I would estimate the number of dead pups in the year 1887 at about five or seven thousand as a maximum I also noticed during my last two or three years among the number of dead pups an increase of at least 70 per cent of those which were emaciated and poor, and in my judgment they died from want of nourishment, their mothers having been killed while away from the island feeding, because it is a fact that pups drowned or killed by accidents were almost invariably fat. Learning further through the London sales of the increase in the pelagic sealing, it became my firm conviction that the constant increase in the number of dead pups and the decrease in the number of

marketable seals and breeding females found upon the islands during the years 1885, 1886 and 1887 were caused by the destruction of female seals in the open sea, either before or after giving birth to the pups. The mother seals go to feeding grounds distant from the islands, and I can only account for the number of starved pups by supposing that their mothers are killed while feeding.

The next gentleman C. W. Price, whose evidence is not of much importance, but I will read it

visited the Pribilof Islands in 1890 and made a careful study of the conditions of seal life in those Islands. I discovered late in the season a large number of dead pups lying upon the rookeries which had the appearance of having been starved to death.

That was an affidavit made in 1892. The gentleman is a fur merchant.

Senator MORGAN.—What Island does he speak of?

Sir RICHARD WEBSTER.—I will look; I think he speaks of St. Paul, if I remember rightly, no he only says the Pribilof Islands. He is a fur-dresser and an examiner of raw fur-skins.

I have been engaged in the dressing and examining of fur-skins about 20 years, and I am an expert in that business. I have examined and handled large numbers of fur-seal skins both of the American and Russian side, and can easily distinguish one from the appearance of the skins,

and so on.

Then he says:

I visited the Pribilof Islands in 1890, and made a careful study of the conditions of seal life on those Islands. I discovered late in the season a large number of dead pups lying upon the Rookeries, which had the appearance of having been starved to death.

That Affidavit was made in April, 1892. Now, I do hope I can make my meaning clear to the Tribunal in this respect; if this evidence is true, there must have been in 1890 a very large and abnormal number of dead pups either on the same Rookeries or upon other Rookeries. It is the fact (we have the Reports) that of every Government Agent who was there from 1884 to 1891, not one makes the slightest reference to any increase in the number of dead pups, or to any abnormal number of dead pups; and what is more important perhaps than anything is this; in 1890 Mr. Elliott goes to the Island, and I shall be in a position, when I come to Mr. Elliott's Report, to point out to you the position he held, the undoubted authority he possesses, and the obvious weight that must be given to his personal observations; but he was accompanied on that Island by four gentlemen, Captain Goff, Captain Lavender, Mr. Murray and Mr. Nettleton, and all four of them make Reports, and from day to day they were all over that Island. There is not a trace or suggestion in one of their Reports of there being any abnormal death of pups from any cause. People, who have had no connection with the Island for years, make affidavits in 1892 that they noticed the death of pups in 1885, 1886, 1887 and 1888; but people whose duty it was to observe it, or record if anything occurred, noticed nothing of the matter. When I call attention to the extraordinary character of the personal investigations made from day to day and written down from time to time with reference to each of these Rookeries by Mr. Elliott in 1890 and attended by these very Treasury Agents in the pay of the United States Government, it is impossible to come to the conclusion that this story of there having been an abnormal death of pups in the year 1890 can possibly be true. Mr. Goff was the Agent for the Treasury on the Islands in the year 1890; he makes his Reports in the years 1889 and 1890, which are printed in the documents and which are before the Tribunal.

I will call attention to the 1889 Report, which is in the 1st Volume of the Appendix to the British Counter Case, at page 84. It was produced

on notice by General Foster, and it will save the Tribunal a little trouble if I tell them at present that my references are negative to show that they make no reference to this matter. I shall have to refer to these Reports later on in another connection. Mr. Goff made his report to Mr. Windom on the 31st of July, 1889; and there is not the slightest reference to any abnormal death of pups. There is a reference to the cause of decrease which I must not be tempted to read now; otherwise, I shall be open to the complaint of reading the same thing twice. In 1890 (the reference will be found in the 3rd Volume of the Appendix to the British Case, third part, page 15), Captain Goff again makes a Report, and I call attention to what Captain Goff knew with regard to what was going on.

He writes on the 31st July, 1890.

PROFESSOR H. W. ELLIOT your recent appointee as Treasury Agent, has spent the season here, dividing his time between the two islands, and giving his entire attention to the state of the rookeries and the methods used at present in driving and killing the seals, and his report will, no doubt, be of the utmost importance, and of great value to the department.

Mr. William Palmer, a representative of the Smithsonian Institution, has, by your permission, spent the season on St. Paul collecting specimens of various birds and animals, and his incessant labours have been abundantly rewarded.

I know it is the line of the United States to belittle the experience and observations of these men. That is their attitude to-day; but I at present call attention to the fact that there was a careful examination being made, with the knowledge of these Treasury Agents, in 1890, by independent gentlemen, and had it been true that upon these very rookeries there was, as the later affidavits say, evidence of an abnormal quantity of dead pups, it must have been observed.

I will not read any further passages from that. Mr. Murray the Treasury Agent from 1889 to 1892 made a Report in 1890. It will be found at page 18 of that same third part of vol. 3 of the Appendix, and Nettleton's will be found at page 48, and Lavender's at page 52, and not one of these gentlemen makes any suggestion of any dead pups there in 1890. But what is more remarkable—and I trust the Tribunal will follow this is, three of these gentlemen make affidavits for the United States as well—Mr. Goff, Mr. Murray and Mr. Nettleton, and two or three —I think three, but certainly two—have made affidavits which, if it had been the fact that these pups were observed dead in 1889 and 1890, it must have come to their knowledge, and their affidavits are absolutely silent with regard to the matter Mr. Lavender the fourth agent had been active in getting affidavits for the United States, but makes none himself in support of this. It does not stop there. There are three Company's agents on the Island, and I need not tell you that the Companys interest would be to tell any fact that showed that their industry had been interfered with by pelagic sealing. It is the interest of the Company to bring those facts before the United States. The first of the affidavits is Mr. Fowler's, who has been on the Islands since 1879. It will be found at pages 25 and 26 of Appendix to the United States Case. He refers to the death of the pups in 1891, and does not suggest that it ever occurred before that year.

Now there is the Agent on the Island of the Company referring to the fact in 1891 as supporting their case and making no reference to what is now suggested by other people who had not anything like his experience—that something of the same kind had been going on from 1884 to 1881, and they now use it to show that pelagic sealing was the cause. Redpath, a witness not unfrequently referred to both in the

argument and in the Case by the United States swore an affidavit which is given at page 152 of the same Appendix—the 2nd Appendix to the United States Case, and he refers to it in this language:

In 1891 the rookeries in St. Paul Island were covered in places with dead pups, all of which had every symptom of having died of hunger, and on opening several of them the stomachs were found to be empty. The resident physician, Dr. Ackerley examined many of them and found in every instance that starvation was the cause of death. The lowest estimates made at the time placing the number of dead pups on the rookeries as 25,000 is too high.

I ask you in all fairness, and I ask those in the habit of considering evidence, if this were possible, if this were true, if this were a gradually increasing occurrence of dead pups on these rookeries, these gentlemen could have been possibly ignorant of it, and, yet they are making affidavits on the part of the United States and are in the position of knowing, and had it been the fact they must have spoken to it.

Mr. Daniel Webster—he has been on the Islands since 1870—makes an affidavit at page 183 of the same second volume, and he refers to the fact of the death of seals—the mothers who had left pups on the rookeries. He refers to that fact as being a cause of the death of the pups, and there is not a suggestion made that prior to the year 1891 this abnormal death of pups occurred. He, Mr. President, was the Superintendent on St. George's Island during that very year when the Witness Morgan states, contrary to everybody else in this case, that in the year 1889, I think it was, (I read it this morning), he noticed 5,000 or 6,000 pups dead in an abnormal manner upon St. George's Island. Now, quite apart from any testimony coming from my side, quite apart from any testimony in respect of which it may be said that it is British testimony or British witness, can you have anything stronger than that; all the Government Agents during that series of years, from 1884 to 1891, and that the Company's Agents on the Islands during that time, have never breathed the suggestion that from 1884 up till 1890 there had been noticed a gradual abnormal death of pups on the Rookeries, which they could only attribute to pelagic sealing? I say that it does not impress one with the care that has been taken in connexion with the obtaining and preparing the evidence in this case that such should be the state of the matter.

Now, Sir, at page 84 of the same volume there is a witness of the name of Dr. Noyes, and no doubt, a gentleman of position. He had been upon the island, if I remember rightly, a great many years—I am not quite sure—from 1880. He was partly on St. George and partly on St. Paul, and he says:

The epidemic theory was urged very strongly in 1891, when the rookeries were found covered with dead pups; but a careful and technical examination was made on several of the dead bodies without discovering a trace of organic disease; while starvation was so apparent that those who had examined them decided that it was the true cause of their death. Had sickness or disease attacked the seal herd, it is only reasonable to suppose a few grown seals would be found dead where so many young ones had died so suddenly; but the most diligent search has failed to find a grown seal dead upon the islands from unknown causes.

It is scarcely to be believed that a gentleman of his position observing upon this abnormal death of pups in 1891, resident in the island the whole time, would, if it had been true that this fact had been gradually increasing and attracted the attention of the residents of the island one of these witnesses actually says when he went back the natives told him they had observed large numbers in the years 1885 and 1886—well, I have sufficiently indicated to the Tribunal that if I relied on the United States testimony alone, it would negative the sug-

gestion that there had been a gradual increase of these dead pups extending over the time when, according to the contention of my learned friends they suggest pelagic sealing had been becoming a formidable factor in the case.

Now I must ask the Court to be good enough to notice what is our testimony with regard to this matter. I will first read the United States case upon it. Page 213 of the United States case says:

Professor Dall, who visited the rookeries in 1880, says: "There were not in 1880 sufficient dead pups scattered over the rookeries to attract attention, or form a feature on the rookery". Captain Bryant, who was on the islands from 1870 to 1877, says: "A dead pup was rarely seen". Mr. J. H. Moulton, who was on St. George Island from 1877 to 1881, says: "There were practically no dead pups on the rookeries. I do not think I saw during any one season more than a dozen." Mr. H. G. Otis, Treasury agent on the islands from 1879 to 1881, states that "it was a rare thing to find a dead pup." Mr. H. A. Glidden, the Government agent from 1882 to 1885, says:—"During the time I was on the islands I only saw a very few dead pups on the rookeries, but the number in 1884 was slightly more than in former years."

Then comes the allegation to which I have called attention that from 1884 up to 1891, the United States' Case alleges that there had been a gradual increase of these dead pups without specifying the particular rookeries, and that this death of pups was occasioned by pelagic sealing.

Now I call attention, if you please, Mr. President, to the British Commissioners Report, paragraph 344, where they say:

In the season of 1891, considerable numbers of dead pups were found in certain places upon the rookery grounds or in their vicinity, and various hypotheses were advanced to account for this unusual mortality. As some of these have special bearings on the general question of seal preservation, it may be well to devote a few words to this particular subject.

In order to exhibit the circumstances surrounding this fact and to arrive at a probable explanation of its true meaning, it will be necessary in the first instance to give in summarized form the observations and notes bearing upon it made on the ground by ourselves.

When visiting Tolstoi Rookery, St. Paul Island.

That is the one I pointed out to you Sir.—

On the 29th July, we observed and called attention to several hundred dead pups which lay scattered about in a limited area, on a smooth slope near the northern or inland end of the rookery ground, and at some little distance from the shore. The bodies were partly decomposed, and appeared to have lain where found for a week or more, which would place the actual date of the death of the pups, say, between the 15th and 20th July. Neither the Government Agent who was with us, nor the natives forming our boat's crew at the time, would at first believe that the objects seen on the rookery were dead pups, affirming that they were stones; but when it became clearly apparent that this was not the case, they could suggest as causes of death only over-running by bulls or surf along the shore, neither one of which appeared to us at the time to be satisfactory. Mr. D. Webster, interrogated on the subject some days later on St. George Island, offered merely the same suggestions, but a few days still later, both Whites and natives on the islands were found to have developed quite other opinions, and to be ready to attribute the deaths to the operations of pelagic sealers killing mothers while off at sea, and leading to the death of pups from starvation consequent on such killing.

Now nobody will accuse the British Commissioners of giving otherwise than an accurate record of what their recollection is as to what occurred. Is it conceivable that if this took place it should be true that the natives—the agents—the people upon the island—had been observing this thing gradually going on from 1884 on this rookery or on any rookery?

Then the British Commissioners say:

347. Believing the matter to be one of considerable importance, however it might be explained, particular attention was paid to it on subsequent visits to rookeries. On the 31st July and the 1st August the rookeries of St. George were inspected, but

no similar appearances were found, nor was anything of the same kind again seen till the 4th August, on Polavina rookery. St. Paul Island, where, near the southern extremity of the rookery, several hundred dead pups were again found by us, here also covering an area of limited size, which we were able to examine carefully without disturbing the breeding seals. It was estimated that the pups here found had died between ten days and two weeks before, which would place the actual date of death at about the same time with that of those first referred to.

348. On the following day the extensive rookeries of North-East Point were visited and examined, but very few dead pups were anywhere seen. Mr. Fowler, in charge of these rookeries for the Company, was specially questioned on this point, and fully confirmed the negative observations made by ourselves at the time. It may here be mentioned that the vicinity of North-East Point had been the principal and only notable locality from which, up to this date, sealing vessels had been sighted in the offing, or had been reported as shooting seals within hearing of the shore.

349. On the 19th August, after a cruize to the northward of about a fortnight's duration.

I ask the Tribunal to note the dates—the 15th, 20th and 31st of July; the 1st August and the 19th August.

On the 19th August, after a cruize to the northward of about a fortnight's duration, we returned to St. Paul, and on the same day revisited Tolstoi Rookery. On this occasion the dead pups previously noted were still to be seen, but the bodies were flattened out and more or less covered with sand, by the continuous movement of the living seals. There were, however, on and near the same place, and particularly near the angle between Tolstoi Rookery and the sands of English Bay, many more dead pups, larger in size than those first noted, and scarcely distinguishable in this respect from the living pups which were then "podded out" in great numbers in the immediate neighbourhood. Messrs. Fowler and Murray, who accompanied us on this occasion, admitted the mortality to be local, and the first-named gentleman stated that in his long experience he had never seen anything of the kind before, and suggested that the mothers from this special locality might have gone to some particular "feeding bank," and have there been killed together by sea sealers. On the same day we visited the Reef Rookery again, and a search was made there for dead pups, which resulted in the discovery of some of approximately the same size with those last mentioned, but probably not more than an eighth, and certainly not more than one fourth, in number as compared with the inner end of the Tolstoi Rookery ground, and proportionately in both cases to the number of living pups.

350. While making a third inspection of the St. Paul rookeries in September, on the 15th of that month, the Reef and North-East Point rookeries were again specially examined. The rookery ground of the south-eastern side of the Reef Point was carefully inspected area by area, with field-glasses, from the various rocky points which overlook it, and from which the whole field is visible in detail save certain narrow stony slopes close to the sea-edge, where dead pups might have been hidden from view among the boulders. Subsequently, the north-eastern sloping ground, named Gorboch on the plans, being at that date merely occupied by scattered groups of seals, was walked over. The result of the inspection was to show that there were on the south-east side a few dozen dead pups at the most in sight, while on the opposite side perhaps a hundred in all were found in the area gone over, being, probably, the same with those seen here the previous month, and in number or contiguity not in any way comparable with those seen at the inner end of Tolstoi.

351. On the same day a final visit was made to the North-East Point rookeries, then in charge of three natives only. Two of these men went over the ground with us, and were questioned on various subjects, including that of dead pups, through our Aleut interpreter. They would not admit that they had seen any great number of dead pups on the North-East Part this season, and did not seem to be in any way impressed with the idea that there had been any unusual mortality there. The ground to the north of Hutchinson Hill was, however, carefully examined by us from the slopes of the hill, and a few dead pups were made out there. Again, at a place to the north of Sea-lion Neck of the plans, and beyond the sand beach upon which hollus-chickie generally haul out, a slow advance was made among a large herd of females and pups, though part of these were necessarily driven off the ground in so doing. An occupied area of rookery was thus walked over, and the dead pups which appeared at this spot to be unusually abundant were counted with approximate accuracy. A very few were found scattered over the general surface, but on approaching the shore edge, an area of about 20,000 square feet was noted, in which about 100 dead pups were assembled. Some of these lay within reach of the surf at high tide. Most appeared to have been dead for at least ten days and several were broken up and mangled by the movement of the living seals on and about them. This particular locality showed a greater number of dead pups to area than any other seen

at this time either on the North-East or Reef rookeries, but in number in no respect comparable to that previously noted at Tolstoi, or even to that on the south part of Polavina.

Then the Report refers to the examination of the bodies which was done under the knowledge of Mr. Stanley Brown, but from the point of view of number it is not material.

Now Mr. Stanley Brown refers to this same occurrence in the year 1891. I am dealing, entirely, Mr. President, with dead pups upon the rookeries. At the bottom of page 18 of the Second volume of the Appendix to the United State case, Mr. Stanley Brown makes a statement, and I ask whether it is possible if it were true that what was discovered in 1891 was only the development of what had been going on in 1887, 1888, 1889 and 1890, it would be possible that Mr. Stanley Brown's Affidavit could have been what it is?

Now this is what he says:

In the latter part of July, 1891, my attention was called to a source of waste, the efficiency of which was most startlingly illustrated. In my conversations with the natives I had learned that dead pups had been seen upon the rookeries in the past few years in such numbers as to cause much concern. By the middle of July they pointed out to men here and there dead pups and others so weak and emaciated that their death was but a matter of a few days.

By the time the British Commissioners arrived the dead pups were in sufficient abundance to attract their attention, and they are, I believe, under the impression that they first discovered them. I procured a number of these pups, and Dr Akerly at my request, made autopsies, not only at the village, but later on upon the rookeries themselves. The lungs of these dead pups floated in water. There was no organic disease of heart, liver, lungs, stomach, or alimentary canal. In the latter there was but little and often no fecal matter and the stomach was entirely empty. Pups in the last stage of emaciation were seen by me upon the rookeries, and their condition as well as that of the dead ones left no room to doubt that their death was caused by starvation. By the latter part of August deaths were rare, the mortality having practically ceased. An examination of the warning lists of the combined fleets of British and American cruisers will show that before the middle of August the last sealing schooner was sent out of Behring Sea. These vessels had entered the sea about July first, and had done much effective work by July 15th. The mortality among the pups and its cessation is synchronous with the sealing fleets arrival and departure from Behring Sea.

If I had to criticise that, Mr. President, from the actual dates, it would not be found to be strictly accurate, but I do not want to pause to discuss a point which is not of such great importance; because what I am going to call attention to later on, makes all criticism attempted to be founded on the dates of vessels in Behring Sea become of no importance at all.

Now at page 101 of the same book—the second volume of the Appendix to the United States Case—will be found the evidence of Mr. Barnes, who says this:

One day, during the latter part of August or fore part of September last (exact date forgotten), Col. Joseph Murray, one of the Treasury Agents, and myself, in company with the British Commissioners, Sir George Baden-Powell and Dr Dawson, by boat visited one of the seal rookeries of that Island, known as Tolstoi or English Bay. On arriving there our attention was at once attracted by the excessive number of dead seal pups whose carcasses lay scattered profusely over the breeding ground or sand beach bordering the rookery proper, and extending into the border of the rookery itself. The strange sight occasioned much surmise at the time as to the probable cause of it. Some of the carcasses were in an advanced stage of decay, while others were of recent death, and their general appearance was that of having died from starvation.

There were a few that still showed signs of life, bleating weakly and piteously, and gave every evidence of being in a starved condition, with no mother seals near to or showing them any attention.

Dr Dawson, while on the gound, took some views of the rookery with his Kodak; but whether the views he took included the dead pups I could not say.

They did, and they are here, Mr. President, if the Court desires to see them. Then he says.

Some days after this—cannot state exact date—I drove with Mr. Fowler, an employé of the lessees, to what is known as Half Way Point, on Polovina rookery.

That is the other one I mentioned.

Here the scene was repeated, but on a more extensive scale in point of numbers. The little carcasses were strewn so thickly over the sand as to make it difficult to walk over the ground without stepping on them. This condition of the rookeries in this regard was for some time a common topic of conversation in the village by all parties, including the more intelligent ones among the natives, some of whom were with Mr. J. Stanley Brown in his work of surveying the island and brought in reports from time to time of similar conditions at substantially all the rookeries around the Island. It could not, of course, be well estimated as to the number thus found dead, but the most intelligent of the natives—chief of the village—told me that in his judgment there were not less than 20,000 dead pups on the various rookeries in the island and others still dying. Dr. Ackerly, the lessees' physician at the time, made an autopsy of some of the carcasses.

And so on. Now I note in passing that the Report on the face of it is obviously not in accordance with the facts because there was an examination made by Professor Dawson, Sir George Baden Powell and Col. Murray, of the actual condition of the other rookeries, and it will be found in the United States papers that they also put the mortality at the same place—namely Tolstoi and Polavina.

Now Mr. President I call attention if you please to the fact, if you will kindly look at the Appendix to Mr. Elliott's Report of 1890, that he is day by day visiting these rookeries in the year 1890 and making his field notes. For instance, this particular rookery is called "Tolstoi". It was visited—(I am reading from page 240), on the 12th June; the 21st June; the 23rd June; the 24th June; the 27th June; the 30th June; the 1st July; the 7th July, and the 10th July. And the next one—the Polavina rookery—is visited on the 3rd June; the 4th June; the 25th June; and on the 3rd July; and you will find in later parts of the same record, careful notes taken of the condition of these rookeries on a number of later days to which I shall have to call attention in connection with another part of the case. I have already told you on many of these occasions he was accompanied by these Treasury Agents.

It is quite impossible to come to the conclusion that if there was in 1890 anything corresponding with this, it would not have been seen. But we have a very remarkable indirect corroboration of this. Professor Palmer was there. He too knew nothing about seals till he went there in the year 1890, and the United States have printed at page 291 of their Counter Case that part of Professor Palmer's Report which the British Commissioners had not annexed to their Report because it did not bear directly upon the particular point that they were discussing and for which they were citing Professor Palmer's Report. But on page 291 it will appear that Professor Palmer, a stranger to the island, had his attention called to the death of the seals—that is to say, seals killed by the surf, and himself noticed seals killed in the same way that Mr. Macoun noticed in that bay to which I called attention, called Zoltoi Beach—killed as we know seals frequently were killed by the surf—and yet there is not a reference in the whole of Professor Palmer's paper from beginning to end, to any abnormal occurrence as to the seals either at Tolstoi or Zapadnie or any other rookery in the island at all.

Mr. CARTER.—Do you mean that he imputes the death of them to the surf?

Sir RICHARD WEBSTER.—I say what Mr. Palmer describes is undoubtedly the death from surf.

Mr. CARTER.—If you will read it, it will be a little more definite.

Sir RICHARD WEBSTER.

The number of pups about the shore of St. Paul began to attract my attention about the middle of July, last year. On August 2nd I stood on Zoltoi Beach.

Zoltoi Beach is the place that I showed the court when I was calling attention to this.—

And counted dead pups within ten feet of me, and a line of them stretched along the beach many of them starved to death on the rookeries, but by far the greater number sunk in the deep water along the margin of the rookeries.

Mr. CARTER.—You did not begin quite high enough.

Sir RICHARD WEBSTER.—I began at any point that refers to observing the seals. Where do you wish me to begin, Mr. Carter?

Mr. CARTER.—If you want to get what he imputed as the cause of it, you should begin a sentence or two higher.

Sir RICHARD WEBSTER.—I beg my friend's pardon. I was not in any way referring to that. I was calling attention to the fact that Mr. Palmer, observing these matters does not suggest that either on Tolstoi nor on the other rookery, Polavina, to which I have called attention, there was any abnormal death, and I am calling attention to it for the purpose of showing that every person who was there in the years 1890 and up to that time proved by their statements that that state of things which the United States in their reply suggest cannot possibly have existed.

Now I come, if you please, to the year 1892; and the Tribunal will find that the condition of things referred to in the year 1892, in the first volume of the Appendix to the British Counter Case. Before I read this, Mr. President, may I remind you of certain admitted facts. It is admitted that the total pelagic sealing in Behring Sea, the whole of Behring Sea, in the year 1892, was under 500. I will first make that good before I read from page 145 of the Counter Case.

Mr. CARTER.—You say it is admitted?

Sir RICHARD WEBSTER.—I said admitted.

Mr. FOSTER.—If you say the eastern part, we will accept it.

Sir RICHARD WEBSTER.—I was not aware that from this point of view it was important. Mr. Foster is perfectly accurate. It is so very far away, Mr. President, that I may be pardoned for having spoken of it as Behring Sea. What Mr. Foster desires me to point out as a limit is a reference to the killing in what they call United States waters. You know what I mean, Sir—to the east of the line of demarcation. Perhaps somebody will show the line of demarcation on that map.

Mr. Justice HARLAN.—We can see that.

(Mr. Tupper here indicated on the map the line of demarcation.)

Sir RICHARD WEBSTER.—At page 93 of the United States Counter Case, it is stated in this way:

In consequence of the zealous and efficient efforts of the naval vessels charged with the protection of the seal herd and the enforcement of the *modus vivendi*, few sealing vessels entered the eastern half of Behring Sea in 1892, and those waters were practically free from open-sea hunters. If the cause of the mortality of 1891 among the pups was any of those advanced by the Report, it is a remarkable and, for the opinion of the Commissioners, an unfortunate circumstance that with the decrease of sealing in Behring Sea dead pup-seals have decreased likewise.

You will not fail to note the fact that they argue that the alleged decrease of dead pups in 1892 shows that the view taken on behalf of Great Britain, that it could not have occurred from pelagic sealing, is refuted. The actual certificate is given on page 156 of the first Volume

of the Appendix to the British Counter Case, to which I am about to refer. It is by Captain Parr, who is the chief officer in charge of the watching fleet:

With reference to the possibility of any other sealing-schooners having been taking seals in the neighborhood of the Pribilof Islands besides those captured, I have heard it stated that one vessel claimed to have done so to the extent of some 100 skins, but I think even that is doubtful. If the total number of seals killed in Behring Sea by sealing-schooners is taken at 500, I should say that it would largely exceed the mark.

I have etc. (Signed) A. A. C. PARR.

Therefore we have got this common ground, that pelagic sealing in the eastern waters of Behring Sea was practically non-existent in the year 1892.

Let me call attention, Sir, if you please to the actual observations made by Mr. Macoun in the year 1892 upon the island, corroborated, as I shall show you presently, by Mr. Stanley Brown's affidavit. I shall read from both the United States testimony as well as from Mr. Macoun's report. I now read from page 145 of the first volume of the Appendix to the British Counter Case:

During the months of July and August a great many females were watched as they came from the water, and although in a few cases they were seen to go to the extreme back of the occupied rookery-ground, none were seen to go beyond it.

(*b*) Many pups lose their lives when stampedes occur, and many others when bulls dash among the breeding females and their young to prevent the escape of a female from the harem.

The scattered dead pups that are to be seen on all rookeries have been destroyed in either of these ways.

(*c*) A few pups probably lose their lives in the surf, or by being dashed upon rocks, but the number must, under ordinary circumstances, be very small. As early as the 18th July, and on many occasions afterwards, pups were watched while in the water close to the shore, and though they were often thrown with great force against the rocks, no pup was ever seen to receive the slightest injury. These causes of death to young seals were noted by me, but are obviously insufficient to account for the great mortality among the pups on Polavina and Tolstoi rookeries.

While standing beside the camera at Polavina rookery on the 22nd July I counted 143 dead pups; they were of the same size as the living pups near them, and exhibited no sign of having died of hunger, nor did it appear that they had been crushed to death in a stampede, as those that could be seen were at or near the limit of the rookery-ground. No estimate could be made of the number of dead pups that were lying on this rookery as the seals lay so closely together on its southern and eastern slopes that but a small part of the breeding-ground was visible. Professor Evermann (a naturalist on United States Fish Commission steamer "Albatross"), who was with me at this time, and who counted 129 dead pups, thought, with me, that if so many were to be seen at the outer edge of the rookery-ground, the whole number must be very great, and about a month later (20th August) I had ample proof that this was the case.

I pause, Sir, to note that the United States have printed Mr. Everman's report of this very day, the 22nd of July; and he, at page 271 of the Counter Case of the United States, referring to this rookery, exactly confirms what Mr. Macoun had said. He gives the number of pups which he saw from that place as 129, the same number given by Mr. Macoun.

I now come back to Mr. Macoun:

I revisited Polavina rookery on this date with a native, Neh-an Maudrigan. This man speaks and understands English very well, and was at this time on his way to North-east Point to take charge of the guard-house there. A great many dead pups were lying at the south end of the rookery, nearly or quite as many as were to be seen on Tolstoi rookery. They were lying on a sandy slope between the water and the rocky ledge that separates the lower from the higher parts of this rookery-ground, and were rather more grouped together than at Tolstoi, from 10 to 100 lying quite close together, with spaces from 5 to 10 yards square between the groups. There were individual dead pups scattered everywhere over the rookery as on all others, but on that part of it referred to above the number was very great, and the

ground on which they were lying was quite deserted by living seals. They extended as far as could be seen along the rookery, but as only the front sloping to the south could be seen, the number beyond the point to the northward could not be estimated. It was at the south end of this rookery that the British Commissioners report having seen a few hundred dead pups in 1891. Photographs taken the 5th August show this ground with the breeding seals still upon it, but many dead pups may also be seen. The native Neh-an Mandrigan was asked how he accounted for so many dead pups; he replied that he thought they had been killed when the old bulls were fighting; but a few minutes later said that he was mistaken, that their mothers must have been killed at sea, and the pups have died for want of food.

You will notice, Mr. President, that that is exactly the same answer that was given in the year 1891, after consideration.

He at this time told me that he had never seen so many dead pups on any rookery before. He had seen those on Tolstoï rookery in 1891, but had not visited that place in 1892.

Dead pups were first noticed by me on Tolstoi rookery the 19th August, though photographs taken by Mr. Maynard on the 8th August, while I was on St. George Island, show that at that date there were nearly, if not quite, as many of them on this rookery as there were ten days later.

At the time I first noticed the dead pups I counted over 4,000, but they lay so closely together that it was impossible to judge what proportion of the whole number was seen. I was told by the Treasury Agents on the island and have no reason for disbelieving their statements, that when this rookery was carefully examined late in 1891, as many or more dead pups were found among the rocks or other parts of the rookery as were on the open space, and seen and specially remarked upon by the British Commissioners in 1891. This being so, it is reasonable to assume that such would be the case again this year. The dead pups noticed by me were on the same ground on which those seen last year were lying, but were scattered over a larger area, and in much greater numbers.

I accompanied the British Commissioners when they inspected Tolstoï Rookery in 1891, and the date of my visit to that rookery this year coincided with their visit to it last year. Depending upon my memory alone, I had no hesitation in deciding that there was a greater number of dead pups at that place in August this year than at the same date in 1891, and a comparison since my return from the islands of the photographs taken during the two seasons proves that this is undoubtedly the case.

We have here, Mr. President, the photographs of the same place in each of those two years, 1891 and 1892.

The pups when I first saw them appeared to have been dead not more than two weeks, and nearly all seem to have died about the same time. Very few were noted that were in a more advanced state of decomposition than those about them, and the dozen or so that were seen were probably pups that had died at an earlier date, and from some other cause than that to which this unusual mortality among the young seals is to be attributed.

The photographs taken on the 8th August show that at that time there were several groups of seals hauled-out on ground on which the dead pups lay, but on the 19th August it was almost entirely deserted by the older seals. This rookery was revisited on the 21st August, and at this time an estimate was again made of the number of dead pups. A large band of holluschickie on their way from the water to the hauling-ground at the back of Tolstoï rookery had stopped to rest on the ground on which the pups were lying and hid a part of them so that on this occasion a few less than 3,800 were counted. On the 23rd August I again visited Tolstoï rookery in company with Assistant Treasury Agent Ainsworth, Mr. Maynard, the photographer, and Antone Melavedoff, who is the most intelligent native on St. Paul Island, and has charge of all the boats and store-house belonging to the Company. This native acted as boat-steerer at the time the British Commissioners visited Tolstoï rookery in 1891; and that I might learn his opinion regarding the relative number of dead pups for the two years 1891–1892, I asked him to accompany me on the occassion referred to above. When asked whether there were as many seals in 1892 as in 1891 he replied: "More; more than I ever saw before". I, at the same time, asked Mr. Maynard to pay particular attention to what was said, and he has since made an affidavit to the above effect, which is appended to this Report.

These dates, Mr. President, are very important, because they extend practically over the same time, rather longer than in 1891, and correspond for all practical purposes with it.

My last visit to Tolstoi Rookery was made on the 11th September. No living seals were to be seen on that part of the rookery-ground on which the dead pups were, and it was now apparent that they extended further to the left than is shown in the photographs taken of them; that is to say, a part of the ground on which seals are shown in these photographs had dead pups on it which at that time could not be seen; this would add several hundreds to my former estimate of their number. No pups that had died recently were to be seen anywhere. It seems reasonably certain that all the dead pups seen on this part of Tolstoi rookery died at about the same time, and I would include with them all, or nearly all, that were lying on the beach. These were doubtless thrown up by the sea, but there is no evidence that they were killed by the surf. The shore is sandy, and there had not been a heavy sea breaking upon it for more than a month previous to the date the dead pups were first seen. It seems possible that the mortality among these young pups was the result of an epidemic that ran its course in a few days, and attacked only a small portion of the young pups. That their deaths were not caused by starvation was very evident, as they were, with few exceptions, large and well developed, not small and emaciated, as is almost invariably the case with those that are known to have wandered away from the breeding grounds and died of starvation. It is usual for young seals that are hungry to congregate at the water's edge and there await the arrival of females returning from the sea to the breeding-grounds. I have on many occasions noted young pups whose continued cries were evidence that the little creatures were in want of food, and invariably pups in this condition were the most persistent in their endeavors to take milk from the breasts of cows as they landed, and would follow them for as great a distance as their strength would permit, returning slowly to the water's edge when the cow was lost sight of. Had the dead pups seen on Tolstoi and other rookeries died of starvation, they would without doubt have been found in masses near the sea, not scattered over all parts of the breeding-ground, and were it possible that they had been killed by the surf they would have been lying in windrows, as was the case at South-west Bay, where on the 23rd August, 133 dead pups were found lying among sea-weed at different distances from the water. Bare spaces from 10 to 30 yards in width, on which no dead pups lay, separated these windrows of sea-weed showing that the highwater mark had changed from day to day. The pups at this place were in all stages of decomposition; a few had died within a day or two, while little remained of others but their bones, with fragments of skin attached. Pups are constantly swimming across South-west Bay from Upper to Lower Zapadnie rookeries, and it is probable that these lying on the beach represent nearly all that had been drowned, or had from any cause died in the water in the immediate vicinity of this small bay, as the shore is steep and rocky on both sides of it, and anything floating about is almost certain to be thrown up on this sandy beach.

At North-east Point, on the 20th August, all the rookery ground visible from Hutchinson Hill was carefully examined with a field glass.

Hutchinson Hill is in the middle of that North-east Rookery, up at the north end.

A few dead pups were to be seen here and there on all parts of the breeding-grounds, and in one place, at no great distance from the water, but on higher ground than could be reached by the sea, at least 500 were visible from Hutchinson Hill. The ground on which they lay much resembled that on which dead pups were at Tolstoi and Polavina rookeries, but was not of nearly so great an extent. They lay scattered about as at Tolstoi, not in groups as at Polavina. A careful examination was made by me of all the rookeries on St. George Island, both before and after the dead pups had been noted on St. Paul, but none were seen there with the exception of a very few scattered ones, such as are to be seen on all rookeries.

Whites and natives on the islands were unanimous in saying that the mothers of the pups found dead on the rookeries had been killed at sea, and that their young had then starved. During the months of July, August and September I had frequent opportunities of conversing with the officers of nearly all the ships stationed in Behring Sea, both those of the United States and of Great Britain, and all agreed that it was not possible for a schooner to have been in and out of Behring Sea in 1892 without being captured (see statement in Appendix (C) of Captain Parr, the Senior British Naval Officer stationed at Behring Sea.) The cruizes of the various ships were carefully arranged by Captains Parr and Evans, and so planned that no part of Behring Sea to which sealing-vessels were likely to go was left unprotected. H. M. S. "Melpomene" and "Daphne", and United States ships "Mohican" "Yorktown," "Adams," "Ranger" and "Corwin", were engaged in this work. No skins worth taking into account were found on the small vessels that were seized, and most of those they had on board were doubtless taken outside Behring Sea, so that to whatever cause the excessive mortality among these young seals is to be attributed, sealing at sea can have had nothing to do with it in 1892.

Without fully indorsing what Bryant says on this subject, he may be quoted. He writes: "When the sun shines for two or three hours and the rocks become heated, there are occasional deaths among the beachmasters and very young pups from sunstroke, the symptoms being a nervous jerking of the limbs, followed by convulsions and death. Fortunately the occurrences are rare, and it was only in 1874 that any appreciable number were lost from this cause. That year young seals died about the 1st August.

Were sunstroke suggested as the probable cause that led to the death of the pups found on St. Paul Island in 1891 and 1892, the positions in which they were found and the nature of the ground in which they lay would favor this theory. Were the sun to shine for even a few hours upon the smooth hard ground of the rookeries, it would become so hot that serious injury or death to the young seals might be the consequence, as it is well known that even the old seals dislike and are seriously affected by heat.

Special inquiry was made by me at the Commander Islands during the first week in September as to whether young seals had been found dead in 1892 in larger numbers than usual, and several of the oldest natives were questioned by me on this point.

I was told by them that none had been seen there but a few that had been killed by the surf or had wandered away from the rookery-grounds and yet there were many schooners sailing from United States ports sealing in the vicinity of these islands during the whole season, and in July and August a great many schooners came from the American coast and sealed in Asiatic waters; many thousand skins were taken there, probably more than in any season on the American side of Behring Sea, but no increased mortality was noticeable in the number of dead pups on the rookeries. The skins of the dead pups that die on the Commander Islands are taken off by the natives and a small price is paid for them at the Company's store. The men examined by me had been recently at the rookeries for the purpose of procuring such skins and reported that they had got no more than usual, and the agent of the Company corroborated their statements.

I remind you, Mr. President, just before I break off, that now you have got what Mr. Macoun had not, because it did not exist. We have got now the report from the Russian Government that there had been a large amount of pelagic sealing close in—so much so that wounded seals and dead seals were picked up in territorial waters, and were washed ashore; and yet there is not a suggestion by anybody that there had been a death of pups on the Commander Islands in 1892 from that cause.

Senator MORGAN.—Sir Richard, I wish to ask you, please, does any witness speak positively of the fact that the surf ever killed a pup seal?

Sir RICHARD WEBSTER.—Oh yes; several.

Senator MORGAN.—From personal observation?

Sir RICHARD WEBSTER.—Elliott, Allen, Bryant—I think all the authorities who studied seal life during the last twenty years, referred to the fact of pup seals being killed by surf upon the beach, when they are caught.

Senator MORGAN.—I have heard that, but I have not yet heard any statement from a witness who was able to say upon his own knowledge that a pup seal was killed by the surf.

Sir RICHARD WEBSTER.—I think I am right in saying that Elliott spoke from his own knowledge, for he studied the subject intimately on the islands for some years; but I will look, Senator. I believe there is also evidence of it.

Senator MORGAN.—I would like to know.

The PRESIDENT.—Sir Richard, I believe you suppose that this extraordinary disease which carried off a number of seals from this place was the reason of this great mortality in 1891. Is there any information about what that disease might be?

Sir RICHARD WEBSTER.—No. It is very strange. In the first place, it is purely local, which is in itself remarkable. When I come to deal

with the real cause of decrease of seal life in these islands, I shall suggest to you—I merely mention it now by way of anticipation—that it is by no means impossible that the depreciation in the male life may have had something to do with it; but I am not bound to take, nor do I take, any burden of responsibility of affirmative proof in regard to this matter. It ought not to be put upon me. You will remember, Sir, I read to you the paragraph of the United States Case, but a few moments ago, in which they state that the depreciation of the death of the pups in the year 1892 shows that the death of the pups in the year 1891 was due to the pelagic sealing and they cite the fact of the alleged less death in 1892 as showing that pelagic sealing was the cause in 1891:

If the cause of the mortality of 1891 among the pups was any of those advanced by the report.

That is by the Commisioners' Report—

It is a remarkable, and for the opinion of the Commissioners, an unfortunate circumstance, that with the decrease of sealing in Behring Sea, dead pups have decreased likewise.

I shall show you now presently, as soon as I come to it, from the United States affidavit, that even up to the beginning of August, the date upon which Mr. Stanley Brown left, that even up to the beginning of August he had noticed that there was an abnormal number of dead pups there, more than there ought to be; and I shall show you that Mr. Stanley Brown left and made his last examination at an earlier date in August, whereas the examination with regard to the whole subject had to be continued, and was continued by Mr. Macoun right through up to the 11th of September, as I have shown you. I think it is scarcely necessary to read it. I ought probably to have read to you Mr. Maynard's affidavit, Mr. President, on page 156, to which Mr. Macoun refers:

1. That during the latter part of the month of July, and for nearly the whole of the month of August, I was employed in taking photographs on the Pribilof Islands.
2. That on the 23rd day of August, 1892, I visited Tolstoi rookery, on St. Paul Island, in company with Lieutenant Ainsworth, Assistant Treasury Agent on St Paul Island, Mr. Macoun, an Agent of the British Government, and Antone Melovedoff, chief boatman in the employ of the North American Commercial Company.
3. We walked to the part of Tolstoi Rookery on which dead pups were lying in great numbers, and while we were all standing within a few yards of the limit of the ground on which these dead pups were, Mr. Macoun asked Antone Melovedoff whether he thought there were as many of them as there were last year, to which he replied, "More; more than I ever saw before. I was asked by Mr. Macoun to particularly note what was said, and did so."

I respectfully submit to this Tribunal that in the face of what I have already read—I will show the corroboration when the court reassembles—the argument put forward in the United States Case is turned against themselves; because if the cause of the death in 1891 was as they themselves say the pelagic sealing in the eastern side of Behring Sea in that year, so, the cause stopping, the result should also cease. I have shown you upon testimony which it cannot be suggested is testimony otherwise than honest, of what was seen, that according to that testimony, there was that same mortality in those particular places in 1892. And again it passes the wit of man to suggest why it was more abnormal because confined practically to Tolstoi and Zapadnie on St. Paul and should not affect the other rookeries.

The PRESIDENT.—You think it strange that it did not affect both islands?

Sir RICHARD WEBSTER.—Of course, if it is due to similar causes. I do not know, Mr. President, whether you have studied the subject of epidemics. It is perfectly well known that epidemics will come back to the same place and the same house. I speak of smallpox particularly, which I have had to study very closely. It is well-known that after an interval of 10 years the epidemic will come back to the same place though there is no apparent reason for it, and though every measure was taken to prevent its coming back to that place. It may be due to atmosphere, it may be due to the damp or something else of that kind. All I point out is this that two rookeries are picked out by death in 1891, and the same two rookeries are picked out in 1892.

The PRESIDENT.—I beg to observe that when mortality befalls young animals in general the most common feature is disease in the bowels, and then of course excreta increases and is observable. I am rather struck by the circumstance, which is not admitted on the other side, that there are no excreta to be found on the island at all.

Sir RICHARD WEBSTER.—On the rookeries.

The PRESIDENT.—Yes; on the rookeries. Well, I suppose the young ones, the pups, must have excreta and especially in times of disease.

Sir RICHARD WEBSTER.—It is not of the same character as that of the grown up animals. It naturally would not be the same kind, as they have been living only upon milk. I again point out to you, Sir, with great deference—I am only agreeing with what you say—that of course we know very little indeed about the diseases of seals. Indeed I do not know that we know anything about them.

Lord HANNEN.—You refer to your knowledge of animals. I think I am right in supposing that you have knowledge of the grouse. How is it as to disease of the grouse?

Sir RICHARD WEBSTER.—It comes back, to the very same places.

Lord HANNEN.—I wanted to know, as far as you could tell. And it is local?

Sir RICHARD WEBSTER.—Local in the most extraordinary way, particularly on the moors in Scotland. Side by side one moor will have no disease upon it and the other will be visited at every periodic occurrence of the disease.

As far as I know, Mr. President—I wish to give the Tribunal information—I believe it is impossible to predict beforehand until the thing has been really examined what is the cause that brings back disease to particular places; but my task today is to show that in this particular respect the argument of the United States is not supported by the facts which are brought before the Tribunal.

Senator MORGAN.—Has anybody said that these seals have diseases of any kind?

Sir RICHARD WEBSTER.—No; but I do not think anybody will say they are free from disease. I know no fish even that is free from disease.

Senator MORGAN.—I supposed some of these experts or dissectors would have observed the disease.

Sir RICHARD WEBSTER.—If they knew anything about it; but I do not think they suggest themselves that they do know very much about it. We have it, of course, in some cases the bodies are emaciated and in others we have it stated distinctly that they were not. They were apparently in ordinary condition of health. That is spoken of by Mr. Macoun. The Tribunal will, I hope, not put a greater burden upon me than I can bear. I am not here to discuss the matter from a scientific point of view. I am here in order that the Tribunal may not be misled by inferences incorrectly drawn and by allegations as to facts not justified by the Evidence before the Court.

(The Tribunal here adjourned for a short time.)

Sir RICHARD WEBSTER.—Mr. President, in leaving the British evidence upon this question of the dead seals, I think it right to say that, while it is perfectly open to the United States Counsel to criticize any opinions put forward by Mr. Macoun or the British Commissioners, I think it only fair to say, in justice to the evidence I have been reading from Mr. Macoun's Report, in every case that I have read it is not a case of mere assertion, but the reasons are given whereby the Tribunal themselves can criticise and form a judgment whether his opinion has been formed on sufficient data.

Now, I come to 1892; and I read first Mr. Stanley Brown's affidavit, at page 388 of the United States Counter Case. It is important to remember that Mr. Stanley Brown left on the 14th of August, and that in so far his evidence is not so complete as Mr. Macoun's. At the beginning of the deposition, you will observe that he was between June the 9th and August the 14th upon the Islands of St. Paul and St. George. I do not pause to consider which part of the time he was on St. Paul and which on St. George; I will take it he had practically a continuous opportunity of observing between those dates. Now, turning to page 388, this is what he says:

Dead pups were as conspicuous by their infrequency in 1892 as by their numerousness in 1891. In no instance was there to be noted an unusual number of dead pups except on the breeding grounds of Tolstoi.

That is the same rookery as that which he had spoken of with reference to the prevalence in 1891.

Here the mortality, while in no way approaching that of the previous season was still beyond the normal as indicated by the deaths upon the other breeding grounds.

I pause again to note that they must be confined to Mr. Stanley Brown's observations before the 14th of August, and entirely independent of subsequent observations taken after the 14th of August and in September.

Any surreptitious killing of the mothers cannot be charged with it, for such killing either there or anywhere else on the island would have become the gossip of the village and readily detected by the attempt to dispose of the skins. Disease or epidemics are not known among the seals; and I have never seen cows dead from sickness upon the islands. There are no hauling grounds so close to the breeding areas that the driving of the young males could cause consternation among the females during the breeding season. Stampedes or disturbances cannot account for it, for not only are the breeding grounds in this particular case of Tolstoi one-fourth of a mile away from the hauling grounds, namely, at middle Hill (the nearest point to that breeding ground from which seals were driven in 1891 and 1892), but it would be practically impossible to stampede this breeding ground by any disturbing cause save of such magnitude as to be the subject of common knowledge on the islands, and I know that no cause for such a commotion occurred.

Now if you will turn to the top of page 389—perhaps the learned Senator will let me call his attention to this. Mr. Stanley Brown seems to me to give a reason, and we will attempt to consider it, though it seems to me, with deference to be an insufficient one.

The true explanation of the deaths upon Tolstoi this year is not readily found, and must be sought in local causes other than those indicated above, and I am confident that to none of those causes can be justly attributed the dead pups of 1891 and 1892. The following explanation based upon my acquaintance with the facts is offered in a tentatious way: a glance at the map will show that the location and topographic character of this rookery have no counterpart elsewhere on the island. The rookeries upon which death are infrequent are those which are narrow, and upon the rear of which are precipitous bluffs that prevent the wandering of the pups backward. The larger part of Tolstoi, as will be seen from the map, extends far back, and has great lateral dimensions. Much of it is composed of drifting sands, and it has rather a steep inclination down to the sea. The shore is an open one, and the surf,

either gentle or violent, is almost constantly present. As the time for learning to swim approaches the pups find it easy to come down the incline. They Congregate in large numbers upon the sandy shore, and begin their swimming lessons. This is at a period when they are still immature and not very strong. The buffeting of the waves exhausts them, and, coming ashore, they either wander off, or struggling a certain distance up the incline, made more difficult of ascent by the loose sand of which it is composed, lie down to rest and sleep, and are overlooked by their mothers returning from the sea. I have seen mother seals go up the entire incline seeking their pups.

Now whether this be right or wrong, it is utterly inconsistent with the explanation that the mothers were killed at sea, because the pelagic sealers would not know whether the mothers had come, from a rookery where the rocks were bluff and the physical conditions were such that the pup would be found by its mother, or whether from a rookery under different conditions, and, therefore, Mr. Stanley Brown's explanation as to these conditions in 1891 and 1892, which he gives in 1892, is inconsistent with the death of the mother seal at sea.

I have seen mother seals go up the entire incline seeking their pups. I find nothing in the history of dead pups upon the islands which does not confirm my belief that the great mortality of the season of 1891 was due to pelagic sealing in Behring Sea. Had it not been so there is no reason why the deaths in 1892 should not have been as widely distributed and as great as they were the previous year.

Mr. President, if Mr. Stanley Brown had had occasion to stay, and had stayed till the middle or the end of September, and had seen what Mr. Macoun saw, I am satisfied with his honesty he would have stated the facts in accordance with what Mr. Macoun saw. I call attention to this that knowing he had some thing abnormal to explain in connection with 1892, he explains it upon grounds connected with the physical position of the rookeries—grounds which have no connection at all with pelagic sealing.

The only other affidavit is Colonel Murray's to be found at page 378, but most unfortunately it is of no value to the Tribunal as it gives no date at all. He does not say when he examined the rookeries, and it is impossible to form any conclusion as to the time he is speaking of when the large numbers occurred. He says on page 378:

I went over the rookeries carefully, looking for dead pups. The largest number on any rookery occurred on Tolstoi; but here as to the rookeries generally, but few of them were to be seen as compared with last year. This was the first time in my four seasons' residence on the Islands that the number of dead pups was not more there than could be accounted for by natural causes.

Therefore he does not agree with Mr. Stanley Brown, who says he saw more dead pups than was normal—more dead pups than would be accounted for by natural causes, and gives us no evidence at all as to the dates when he examined the rookeries. I do not want to occupy time by taking upon myself a burthen that does not rest upon me; but the learned Senator was good enough to ask me if I had any suggestion to make in regard to this matter, and I think perhaps that the killer whales ought not to be put out of sight altogether, and I will tell the Court why I think they ought not to be put out of consideration. It may be that the character of the beach in those localities might make the seals more liable to attack from killer whales at that place than others, and certain numbers of mothers might be killed in the water while bathing off the rocks. It used to be supposed that the killer whale never came there till September; but if the Tribunal will turn to page 311 of Mr. Elliott's last Report, there will be found a number of instances of killer whales coming much earlier in the year, and no doubt our knowledge on this matter is being extended.

In 1882 they were there on the 9th of May, in 1886 they were there on the 5th May, in 1888 they were there on the first of July, and it was so important that Captain Lavender, one of the Agents of the United States wrote to Mr. Elliott on the subject of the killer whales in these terms on page 312. He says:

That he is now stationed on St. George Island as Treasury Agent and not having been long enough on the island to be a competent judge as to the number of seals destroyed annually by these monsters, he has asked the opinion of gentlemen who have spent every season for the last ten years here and the answers to all my inquiries have been that this species of whale must be destroyed or the seal rookeries will be something of the past in a short time; they also informed me, that during the month of October when the pups first take to the water they are killed by the thousand and that the water along the shore of the rookeries is red with the blood of young seals which fall easy victims to these monsters, having no fear of them...

He closes with the following sensible recommendation:

The next Congress should make an appropriation sufficient to furnish two whale boats and crews with all the modern improvements for the killing of whales and to station one boat and crew on each island during the ensuing year with orders to patrol the islands daily if possible, and destroy this whale wherever an opportunity is afforded. These boats should be in charge of experienced whalemen from some part of the New England states where this whale and other similar species exist in large numbers, there would be no trouble in obtaining men who were well versed in this kind of whaling, and it is my opinion at the end of the year it would be found that killers were very scarce and would not come near the shore while their appetite for seal and seal-pups would be changed so much, that cod fish and other similar varieties would be good enough for them. I shall endeavour to write more fully on this subject in the near future when I have had a little more experience on the islands as I consider it one of great importance.

That rather bears upon the question put by Lord Hannen very early indeed to Mr. Carter, I think, whether any steps had been taken to interfere with these killer whales. This was a recommendation by the Treasury Agents suggesting that the authorities should in some way interfere with killer whales and it also appears that they destroy many more than they eat—that is to say they kill them, as many animals of that kind do, from sheer mischief. The fact of the killer whale preying upon the seals in large numbers as mentioned in page 62 of Mr. Elliott's first report and at the Commissioners report, page 59, paragraph 334:

Killer whales (*Orca rectipinna*) are among the more active enemies of the fur-seal. Mr. D. Webster, who, because of his long experience on the Pribilof Islands, has already been frequently quoted, states that these whales usually come to the islands from the north early in September, and stay about them as long as the seals do. They kill many seals, particularly pups, and wantonly kill, apparently in sport, many more than they actually devour. Captain Lavender, in his Report for 1890, mentions the occurrence of large schools of killer whales in pursuit of young seals about the islands on the 30th October in that year, and Lieutenant Maynard mentions a case in which a single killer whale was found to have fourteen young seals in its stomach. The Aleuts at Ounalaska further stated that they have often seen killer whales pursuing and catching fur-seals, not alone the young, but also the adults.

And Mr. Bryant at page 407 says:

When the season arrives for the young seals to enter the water the animals are seen near the islands creating great consternation among the seals both young and old.

Senator MORGAN.—Is not that an inducement for sending out excursions to destroy killer whales, if the fur-seals are to be subject to another enemy, *hostes humani generis.*

Sir RICHARD WEBSTER.—I do not think that bears directly upon my argument, and of course I must not criticise it. You are aware of the view for which I have to contend and I have argued that I am not representing the *hostes humani generis.*

Senator MORGAN.—I speak of the duties of Congress which Mr. Elliott seems to think incumbent upon them.

Sir RICHARD WEBSTER.—It was not Mr. Elliott, it was Capt. Lavender, but it would not be becoming on me to comment upon what you have said. I must not depart from my position but simply submit what I think is fair on behalf of her Majesty's Government in this respect.

I pass now to another subject, and that is the body of testimony to show a large number of these seals never go near the Islands at all. More than once it has been put to me by a Member of the Tribunal, is there not evidence that a seal must go on land at some period of the year in connection with its pellage? That led me most carefully, together with those who assist me, to examine the whole of the literature again, so far as it was possible to do so having regard to our other duties, and, as far as we can discover, not only is there no evidence that every seal must go to the land, but there is very strong evidence to show that a large proportion of seals every year do not go to the land. It appears to stand in this way; the bulls go to the land when they have the desire and capacity to command a rookery. Many of the "holluschickie" go to the land certainly from the time that they are three years' old possibly younger and haul out; but there is no evidence that every young male goes to the land; and, as I have said, there is strong evidence the other way. There is no evidence that the females go the land at all till they come to be delivered of their first pup. There is abundant evidence in the Appendix, Volume II, pages 33 and 34, of the British Counter Case,—a very large body of testimony showing and pointing indisputably to the fact that impregnation may take place at sea, and there is no evidence whatever in this Case of any virgin cows, in the sense of being cows of one or two years' old, being upon the Rookeries or being in connection with the males upon the Islands.

The evidence is really uncontradicted that every cow that comes to the Islands, so far as it can be traced, is either going to have a pup or has a pup upon the Island. I do not take the British testimony alone at all, but the testimony upon both sides whether or not the virgin cow who has not had a pup frequents inland waters, there is no evidence to show and could be none except that a certain number of virgin cows have been killed within the 8-mile distance and the 20-mile distance, and still further out; but there is absolutely no evidence of the virgin cows going ashore.

In that connexion I would pass from that reference on page 33 of the 2nd volume of the Appendix to the Counter Case. The affidavits should be examined by anyone who wishes to see if the evidence is trustworthy; and I only say this, that reading it for the purpose of seeing whether they were speaking to what they saw or what was merely surmise when you look at these affidavits there can be no doubt, if the men are telling the truth, impregnation takes place at sea.

Lord HANNEN.—There are 38 men who state they were eye-witnesses.

Sir RICHARD WEBSTER.—And there are the natural matters mentioned which leave it beyond all doubt. Assuming we had not this very strong fact, that no cow without a pup has ever been seen on these rookeries from the time she was born, that is a very strong corroboration that the first instinct of the cow to go to the Island is to be delivered of her pup.

Now at page 139 of the first volume of the Appendix to the Counter Case this matter is dealt with:

While on the Pribilof Islands in July and August of 1892 I endeavored carefully to note everything that might throw light on the question as to when the virgin females first receive the males, and during that time did not see one female seal that was

not either still carrying her young, or whose size did not show that she was of sufficient age to have already had a place on the breeding grounds. In other words, I never saw a virgin female upon the breeding islands. Every female of small size that was seen moving about the rookeries or leaving the water was watched, and was without exception found either to go at once to some harem where she was plainly at home, or by her manner it was evident that she had young somewhere on the rookery. Very often, too, if watched until they lay down, it could be seen that their breasts were swollen as if full of milk, though this was by no means always the case. Not one cow concerning which I was left in doubt was seen on any rookery, and I feel certain that no virgin cow came ashore at these places.

Mr. J. Stanley Brown, who had been on the islands for some weeks before I reached them, told me (8th July).

Will the Tribunal remember the United States Case is, and our Case is that the cows have practically all, though not absolutely all come by the end of June—the 20th June is the date nearest fixed.

Mr. J. Stanley Brown, who had been on the islands for some weeks before I reached them, told me (8th July) that he had been carefully watching a number of harems as they grew, and was certain that not one virgin cow had yet come ashore. He told me at this time that he was quite sure that these young females did not haul out with the "holluschickie", but spent the early part of the season in the water in front of the breeding-grounds and came out on them later on and were then served either by the old bulls or by younger ones near the water.

This explanation can hardly, however, be the true one, as were the virgin cows really in considerable numbers in front of the rookeries, they would be seen there at all times; but often, when the day was cold and cloudy, hardly a seal was to be seen in the water near the islands though at other times it was black with them. Where are the young females when few seals are seen in the water?

Were it true that the young females are not served until late in the season, they would be either much later in bringing forth their young than the older cows, or they must carry their first young for a much shorter time than those of following years, which is scarcely credible.

I do not think it will be suggested—we have heard of a great many curious laws mentioned, but a shorter period of gestation in the earlier years will scarcely be suggested.

But two other solutions of the question seemed to be possible: one that females do not come to the breeding islands, unless in very small numbers, until they arrive there to give birth to their first young; the other that these two or three-year-old females haul out with the holluschickie, and are served by the older bachelors among them. Mr. Brown in August appeared to come to the latter conclusion, and even pointed out to me small seals among the holluschickie, which he asserted to be females. Though asked by me to shoot one or two of these small seals (as females had been shot by his orders a few days before at North-east Point for the purpose of determining whether they had been feeding), he declined to do so. Had this been done, these questions might at once have been decided.

Then at the bottom of the page is stated, and the authority of Mr. Bryant is given, that the young three or four-year-old males met cows in the water as they came from the rookeries; and he refers to the virgin females.

It seems then probable that at best the greater portion of the virgin cows are first served at sea. Bryant speaks of its being a common thing for young three and four year old males to meet cows in the water as they come from the rookeries and there perform the act of coition; and though these cows were probably ones that had young ones on the rookeries many hunters and captains of sealing-schooners with whom I conversed at Victoria and elsewhere assured me that they had often seen seals copulating in the water and had shot both male and female while they were in the act. The female in majority of cases was one that had not yet had a pup, though in some instances they were barren cows with milk in their breast.

Then Mr. Stanley Brown, at page 13 of the second Volume of the Appendix to the United States Case, says:

The time of the arrival of the virgin cows is not easy to determine, but from my observation my present conclusion is that they arrive with the cows and for a while spend their time in the water or on the land adjacent to the rookery margin.

That is a present opinion formed by Mr. Stanley Brown after one year's experience of the Islands. It obviously affords no affirmative testimony in favour of the idea; and, on page 16 of the same book, he says:

Up to the 20th of July the breeding grounds present a compact, orderly arrangement of harems, but under the combined influence of the completion of the serving of the females and the wandering of the pups, disintegration begun at that date rapidly progresses.

I wish I had remembered that paragraph when I referred to the pups leaving the Rookeries.

It is at this time that the virgin cows of 2 years of age, and not older than 3 mingle more freely with the females and probably enter the maternal ranks, for the unsuccessful males and maturer bachelors, no longer deterred by the old males, also freely wander over the breeding grounds.

Well, of course the statement of what may *probably* happen is not of any great value for the purpose of forming a definite conclusion.

But now having called attention to that matter the fact of no virgin cows going at all—I now desire to show that there is very strong evidence that a large number of seals never go to the island at all.

Lord HANNEN.—I suppose you mean there is a large number of them that do not go to the island in a particular year?

Sir RICHARD WEBSTER.—Exactly.

Lord HANNEN.—They go at some time or another.

Sir RICHARD WEBSTER.—It is not a matter of necessity that every seal goes to the island every year—that is what I meant, my Lord, exactly.

Now the first matter which I will discuss in this connection, is that which has more than once called forth questions from the Tribunal with regard to what "Stagey" seals mean, and when they are found. Now the "Stagey" period is perfectly well known—it is from the 1st of August to the end of September; and in the 10th Census Report, at page 46—the Standard book of the United States upon Seal Life, prior to the 1890 Report, it is mentioned in this way:

Mr. PHELPS.—This is Elliott's report.

Sir RICHARD WEBSTER.—Yes. Elliott's 10th Census Report, published again in 1881.

About the 15th and 20th of every August, they have become.

That is speaking of the seals on the land.

They have become perceptibly "stagey", or, in other words, their hair is well under way in shedding. All classes, with the exception of the pups, go through this process at this time every year. The process requires about six weeks between the first dropping or falling out of the old overhair, and its full substitution by the new. This takes place, as a rule, between August and September 28.

Now having fixed the date—I am going to fix it by other evidence as well—I ask the Tribunal to understand that my case is that during that period seals are continuously taken at sea, showing that it is not required for the animals to be out on land during such a period; and, further than that, upon the evidence, prior to the year 1892 there is no suggestion of a "stagey" seal ever being found in the pelagic catch. The United States in their Counter Case have endeavoured to give some evidence with regard to the year 1892, to which I will call attention before I leave this branch of the subject; but my case is that the "stagey" season is from the 1st of August to the end of September—the 28th September; and that during that time seals are continuously taken at sea in the non-stagey condition.

Now Allen, at page 404 of the Monograph of North American Pinnipeds, says:

A diversity of opinion exists on the island as to whether or not the fur is shed with the overhair. I have given close attention to the subject and find that all the evidence is against the opinion that the fur is shed. The great quantity of overhair annually shed by this immense number of animals cover the ground like dead leaves in a forest. It is blown by the winds around the rocks, and becomes trodden into the soil, so that when the earth is dry if a piece be taken and broken the whole mass is found to be permeated with it like the hair in dried plaster. The difference between the fibres of the overhair and the fur is plainly apparent to the eye. I have, however, gathered parcels of it at all times during the shedding season and subjected it to microscopic examination, but have always failed to detect the presence of fur in sufficient quantity to warrant the belief that any of it is shed naturally. The shedding of the overhair begins about the middle of August, and the Seals are not fully clothed with the new coat until the end of September, and it does not attain its full length before the end of October. The first indications of shedding are noticed around the eyes and fore flippers and in the wrinkles or folds of the skins.

General FOSTER.—That is Bryant quoted by Allen.

Sir RICHARD WEBSTER.—I really was not sure, General Foster; I am very much obliged for the correction.

General FOSTER.—It is very important.

Sir RICHARD WEBSTER.—It makes no difference from the point of view of authority. It is quoted by Allen—I think General Foster is right. It is Bryant's language but it is quoted in Allen's book. It is quoted as an authority to which Allen has given his approval.

I am not quite sure that it has not been suggested by the Tribunal, but it seems to me there may be not a natural solution of this matter. It seems to me it is quite possible that the coat may change while the seals are in the water more gradually without the seal actually becoming "Stagey" or in that condition; because it is clear that there does occur a difference in the appearance of the coat when the seal has been out sometime upon the land.

Now the British Commissioners Report upon this contains some statements which will be of assistance to the Tribunal; and I call attention, first, to Paragraph 134, where they say:

With seals killed at sea, the skins are never found to be in a "Stagey" condition as has been ascertained by inquiries specially made on this point, and there is, therefore, no naturally definite close to the time of profitable killing, such as occurs on the islands. The markedly "stagey" character of the skins at a particular season appears to be confined to those seals which have remained for a considerable time on the land.

I also call attention to paragraph 281.

About the middle of August, most of the seals found upon the Pribiloff Islands become what is known as "stagey", in consequence of the shedding of the hair and under-fur. This condition appears to continue, more or less definitely, for about six weeks. The fact, elsewhere mentioned, that practically no "stagey" skins are ever taken at sea, appears not only to show that the change in pelage is rendered definite and well marked by prolonged resort to the land, but also that during this period the seals frequenting the islands do not go to any great distance from their shores.

I also call attention to paragraphs 631 and 632.

631. No loss occurs at sea from the taking of seals with "stagey" or unmerchantable skins. All those familiar with pelagic sealing who were questioned upon this point agreed as to the fact that "stagey" skins are practically never got at sea, not even in Behring Sea at the season at which the seals upon the islands are distinctly "stagey". The skins taken in the earliest part of the sealing season, in December and January, are sometimes rather inferior, but they do not fall into the general category of "stagey" skins.

632. It would thus appear that the distinctly "stagey" or "shedding" condition of the fur-seal supervenes after a sojourn of some length on shore, and that such sojourn results in a general change of pelage which does not occur in the same

marked way when the animals remain at sea. The same circumstances has further some bearing on the question of the possible excursions of the seals from the breeding islands, and on the interchangeability of the seals remaining on or about the islands with those of the general sea-surface, which thus seems to be exceptional, during at least the later summer and early autumn, which is the "stagey" season ashore.

Mr. President, the pelagic sealing has extended right away through the months of August and September, and up till the year 1892, no suggestion has ever been made that skins in a "stagey" condition form part of the pelagic catch.

Now I wish to give you what is the United States evidence in support of the theory that "stagey" skins may be found at sea. Will the members of the Tribunal be good enough to take the Counter Case of the United States before them and turn, first, to page 412. There will be found a trade report incorrectly called a catalogue. The number of skins are too small to make this document of any use. They might be raided skins.

I am not sure that this is ever actually referred to in the United States Counter Case itself. If it is, I will supply the reference, but this is the only evidence.

TITLE PAGE OF A LONDON CATALOGUE OF FUR-SEAL SKINS. C. M. LAMPSON AND CO.

Those you know, are the agents of the lessees.

LONDON, *31st March, 1892.*

AT THE SALES OF SALTED FUR-SEAL SKINS

THIS DAY

C. M. LAMPSON AND CO.

Skins.		
632.	N. W. Coast, etc., part stagy (low)	Sold the same as in January last.
472.	Cape Horn	

GOAD, RIGG AND CO.

1,519.	N. W. Coast, part stagy (low)	Sold the same as in January last.
1,969.	Cape Good Hope	

Now at page 357 of the same book, is the evidence of Mr. Charles J. Behlow. He has made a number of affidavits. I shall have to say in connection with another matter—I will not pause to prove it now—that Mr. Behlow's testimony is open to very serious criticism with regard to his accuracy. This affidavit is made in November 1892. He says:

I find that all fur-seals taken both in Behring Sea and on the islands therein, from about the 10th of August until the end of October, are what is known to the trade as stagey, meaning the animal is changing its coat, during which period its skin is very inferior in quality; in fact, almost unmerchantable.

Now on page 376 of the same volume, will be found the affidavit of Mr. Walter E. Martin made in November 1892. These are made in connection with the Counter Case. He says:

I have, as therein stated, handled large numbers of fur-seal skins of all kinds, including Northwest Coast skins, or those of animals taken in the water, and I know from personal experience that a certain number of "stagey" skins are always found amongst them. Whether or no skins taken in the water are "stagey" will depend on the month in which they are taken. The staginess does not begin until after the middle of August, and as most of the skins secured before the seals enter Behring Sea are taken previous to that date the percentage of "stagey" skins amongst this class is insignificant. But among the skins taken in Behring Sea after August 15th will always be found a certain percent of stagey ones.

I call attention to a catalogue which will be exhibited now, of the sales of skins for years; and up till 1892 no suggestion of any skins being so described is to be found—

Lord HANNEN.—I suppose, Sir Richard, I must have missed something: what is the importance of this? If "stagey" seals are found at sea, it proves that they do not need to land to become "stagey".

Sir RICHARD WEBSTER.—I suppose it is in order to meet the case which the British Commissioners believed to be the true case—(and our evidence would seem to support it)—that "stagey" seals are not found to any great extent, my Lord, at sea. However, there is only one other reference which seems to me to give the clue to the whole thing. I am reading from the affidavit of Mr. Thomas F. Morgan, at page 377 of the same volume, where he says:

> Filth, grease, and oil make skins come out of kench flat, and such skins are classed as low when sold.

Now that shows that the classing of the "low" skins, which was the other name given for these so called "stagey" skins in 1892, is due to filth, grease, and oil, when the skins come out of the kench (which I believe is something to do with the mode of treatment); and therefore the piece of evidence which has been supplied by the United States in this regard we submit is of no substantial value to rebut the statement that "stagey" skins are only found where the animals have been a long time upon land.

Lord HANNEN.—It would appear from the furriers' statement that there is a difference between "low" and "stagey".

Sir RICHARD WEBSTER.—Well, I should have thought not.

Lord HANNEN.—I should infer that from the way it is entered. Some of them are called "stagey" and some "low".

Sir RICHARD WEBSTER.—But in the catalogue, my Lord, which is exhibited by the United States, page 412, I read the word "low" to be a synonym for "stagey". Perhaps you would not mind looking at it again.

Lord HANNEN.—Certainly; what is the page?

Sir RICHARD WEBSTER.—412. It is put in brackets. This is the only evidence. We have to draw our own conclusions in regard to it.

The PRESIDENT.—"Low" is generally of inferior quality, I believe?

Sir RICHARD WEBSTER.—So I understand it.

The PRESIDENT.—And stagey skins are always "low", though "low" ones are not always "stagey".

Sir RICHARD WEBSTER.—They mean by that use of the word "stagey" that they are not in good condition. That is what I read and understand that extract to be. I think it is not an unfair thing to say, Mr. President, when this evidence is produced in the Counter Case, and when there is prior to the period of the United States Counter Case no evidence at all of stagey seal being found at sea during that time, I think it will be some warrant for the argument I am using.

Mr. CARTER.—You observe the date is 1892.

Sir RICHARD WEBSTER.—I so stated. I stated 1892.

Mr. CARTER.—That was before the Counter Case was prepared.

Sir RICHARD WEBSTER.—I beg my friend's pardon.

Mr. FOSTER.—It was the 31st of March, 1892.

Sir RICHARD WEBSTER.—My friends must not misunderstand me. I am not suggesting that the catalogue is not genuine, or anything of that kind. They misunderstand me. My point is that desiring to get

the best evidence they could to support the view of stagey seals being found at sea, when they are preparing their Counter Case, they find this catalogue, and put it in. My criticism is not that they are guilty of improper conduct, but that from the facts in regard to the matter, there is warrant for my argument. They will have a chance to rebut my argument when the times comes for them to reply.

My strong point is this, which I have mentioned already: that during the whole time the seals are stagey on land, they are being taken at sea in ordinary condition, so far as we can tell. I have had put together an abstract which I will hand to my friends and to the Court, taken from the affidavits, of exactly the same character as that Mr. Coudert used in reference to one part of his case. I think it was about the percentage of females. This will save the court a good deal of trouble in looking up references. All the references are from volume II of the Appendix to the British Counter Case. This bears, Mr. President, upon both points. Perhaps I had better state it once more. It bears upon the point that during the time seals are upon the island, both previous to the stagey time and at the stagey time, they are found at sea, large distances from the island under circumstances which would indicate that they have no immediate connection with the island.

I will ask Mr. Macoun to indicate on the map, as I read, the various places mentioned:

Seals not frequenting the Breeding Islands.

C. F. DILLON, p. 47.—In 1888 I came south from Behring Sea, about latitude 175—west, and caught seals there. This was in the latter part of August. In 1886, late in August, we killed seals 30 or 40 miles south of 172nd Pass. Between Unimak Pass and Saanak Island, in 1887, I saw seals quite abundant in the latter part of July. In 1889 we got seals about Kadiak, off and on, all summer. In 1890, late in August, I killed a sleeping seal off the Shumagin Islands, and saw others.

CHARLES J. HARRIS, p. 51.—In August 1890 I saw seals about 300 miles from Kadiak, and in August, 1891 I saw seals about 250 miles from Kadiak. I have seen seals as far south as Queen Charlotte Islands in August.

R. O. LAVENDER, p. 55.—Coming home from Behring Sea this year I saw four sleeping seals off Cape Flattery, the 21st July; one was shot. It was a barren female.

ABRAHAM BILLARD, p. 56.—Last year the "Beatrice" crossed Behring Sea from east, starting from a point 35 miles north of St. Paul Island. I saw seals all the way over to the Copper Island grounds, and got two seals on the line between the Russian and American sides of the sea.

W. T. BRAGG, p. 57.—In August 1888 I saw sleeping seals in the water near the Scott Islands, that is within 20 miles from the said islands, and have heard other sealhunters make statements that they had also seen seals there.

ALFRED R. BISSETT, p. 60.—From my experience and observation I believe that immense numbers of the seals that go up this coast never enter Behring Sea. I know that all through the summer and early fall seals are scattered over the North Pacific, north of Vancouver Island, and as far as the 165th meridian east.

WILLIAM DEWITT, p. 62.—In 1891 the "Viva" crossed Behring Sea from about 20 miles north of Amuka Pass to the Copper Island grounds. I saw seals scattered all the way over. This year the "Sea Lion" went over outside the Aleutian Islands. I saw the seals in about the same way all the way over.

GEORGE FRENCH, pp. 66, 67.—Last year, 1891, when the "City of San Diego" was crossing Behring Sea from Amutka Pass to Copper Island, we passed small bands and bunches of seals travelling rapidly north-easterly; this took place on three different days. The last lot we met were about 150 miles from Copper Island. These seals were the same kind of seals we got at Copper Islands, and I am fully satisfied they were crossing Behring Sea to the Pribilof Islands. This was between the 5th and 12th July, 1891.

EMILE RAMLOSE, p. 72.—Other years I have seen seals,—large seals,—in July outside of the 172nd Pass, and in August between Unimak Pass and the Saanak Islands.

ERNEST LORENZ, p. 73.—Last year I got female seals in milk off Queen Charlotte Islands in July.—I know from my own experience that seals remain off the coast of Vancouver Island all the year round, as well as off Queen Charlotte Islands and Southern Alaska.

GEORGE McDONALD, p. 77.—One year,—in the month of August, on the "Lily",—I got seals 200 miles south of the Shumagin Islands.

JOHN WILLIAMS, p. 84.—About the 25th June the "Brenda" left the vicinity of Kadiak Island for the Copper Island sealing-grounds, at which we arrived on or about the 24th July. On the voyage over, when off the Rat Islands, about 90 miles south, I saw numers of seals travelling towards these islands.—When the "Brenda" was about 40 miles south of Attu Island I saw seals; the weather was too rough to hunt.

W. O. HUGHES, p. 101.—About the 23rd June last I left Tonki Bay for the Copper Island grounds, at which I arrived on the 10th July. Between the 172nd Pass and the western islands of the Aleutian group, from 30 to 60 miles off south shore, I saw scattering seals.

G. C. GEROW, p. 11.—I do not know cows go to sea to feed when they have young on the islands, but far to the westward cows in milk are seldom taken; *the seals there are young females and males.*

GEORGE WEBSTER, p. 120.—In travelling from the American to the Asiatic side of Behring Sea from the middle of June to the middle of July I have seen seals all the way across on fine days.

W. O. SHAFTER, p. 125.—In crossing from the American to the Asiatic coast in July we saw seals more or less every day.

LEE J. THIERS, p. 127.—In coming back from the Japan coast this year we left, Skotan about the 24th June, and followed the "great circle" track for Victoria where we arrived about the middle of July, and in the passage across I saw seals every day.

WARREN F. UPSON, p. 127.—In crossing over this year to the south of the Aleutian group, going to the Commander Islands, during the month of July, I noticed seals more or less in the passage.

F. J. CROCKER, p. 129.—In crossing from the American to the Russian side I have noticed seals more or less every day during the passage; this would be about the month of August.

H. J. LUND, p. 131.—On the way home this year (from Asiatic side) during the month of July, on the "great circle" track, we saw seals every day—some days as many as twenty.

NOTE.—These notes are included under the heads "Intermingling of fur-seals in all parts of the north Pacific," and "Occurrence of fur-seals south of the Aleutian Islands during the summer months," (in vol. II B. C. C. App.) where many additional references will be found. Only those in which the month is mentioned are included in the above synopsis, though all referring to the crossing from American to Asiatic side of Behring Sea might properly have been included.

The Makah Indians at the bottom of this page 8, who as it happens, speak to the seals about Cape Flattery, certainly give very important testimony in this respect:

Many of the Makah Indians whose testimony appears in the United States Case (Appendix II) state that the seals remain in the vicinity of Cape Flattery until July. Among these the following may be mentioned as the most important:

LANDIS CALLAPA, p. 379.—Middle of July.
JAMES CLAPLANHO, p. 382.—Middle of July.
FRANCK DAVIS, p. 383.—As late as July.
ELLABUSH, p. 385.—Middle of July.
ALFRED IRVING, p. 386.—Middle of July.
JAMES LIGHTHOUSE, p. 390.—Middle of July.
OSLY, p. 391.—Last of June.
WILSON PARKER, p. 392.—June and July.
JOHY TYSUM, p. 394.—Middle of July.
WATKINS, p. 395.—Middle of July.
CHARLEY WHITE.—10th July.
WISPOO.—In July nearly all the seals have disappeared.
HISH TULLA.—Not all gone until in July.
THOMAS ZOLNOKS.—In July all are gone.

The above dates should more properly be taken as those at which seal-hunting is discontinued by the deponents. As Charles Hayuks says, "We continue taking them (at Barclay Sound) until June, but there are seals about all summer. (British Counter Case, Appendix, vol. II, p. 146.)

Mr. President, would you just conceive for a moment what the importance of this is? The case that the United States make, in justification of their claim for a regulation giving them more than the property

claim would have given them, must be, if it is worth any thing at all, in connection with some idea that every seal has got such connection with the Pribilof Islands that they are entitled to have it given to the United States. That is their case.

Now, take the end of June and the beginning of July. What is going on then? Breeding upon the islands. That is to say, the impregnation, and birth of the young. If the case were that the seals must be at those islands at that time, the Pacific Ocean would be empty of seals; and the rest of Behring Sea would be empty of seals, during these important months, when, according to the contention of the United States, every seal must be upon the islands, it is the fact that thousands of miles away from these Pribilof Islands, these seals are found at this period of the year.

Then take the stagey season. Many of the dates which I read referred to the time when, according to the hypothesis suggested for our consideration, the seals must be upon land in connection with their pelage. My respectful suggestion is that for the Court to act upon any assumption in the face of the testimony to which I have called attention would be to disregard the conclusions that ought to be drawn from evidence, in the ordinary sense of the term, and in the absence of any contradiction, if it can be contradicted, or in the absence of any suggestions as to how it is that these seals are found at these great distances from the islands at a time when, according to the United States hypothesis, they ought to be upon the islands, you are to come to the conclusion that every seal must go to the island at some time of the year or another. There are only two causes suggested, Mr. President. The one cause is the sexual instinct. The other cause is pelage. One relates to a limited time, between what I may call the beginning of June and the beginning of July, and the other relates to a limited time from about the first of August to the 28th of September.

Senator MORGAN.—You make no reference at all to the interruption that might possibly occur in the journey up to the Pribilof Islands from the seals being hunted and shot at and wounded and driven off their course in consequence of those things.

Sir RICHARD WEBSTER.—Of course, Mr. Senator Morgan, it is a perfectly fair observation to be made, if there was any reasonable evidence to suggest that the millions of seals which, according to the United States Case, must be there in order even to approximate to the quantity which they are able to kill every year, could all be so dispersed or diverted by their natural enemies.

Senator MORGAN.—Not at all. It is very few, as I understand it, that are dispersed and prevented from going to the islands.

Sir RICHARD WEBSTER.—I should not have thought—I am addressing the Tribunal—that it was a satisfactory criticism of the evidence that I have read to refer to those seals as being few. There is a large number of witnesses and a large number of different voyages during June, July, August and September; and in the aggregate I should have submitted with confidence that, looking to the length of the voyages, and looking to the length of the distances, it means a very large number of seals, and not a few.

But under any circumstances, frightening the mother could not prevent the seal going to land for staginess. In fact, I should rather have thought they would prefer to go to the land if they were frightened at sea. Of course if the mother is killed, she will not go to the island. She goes to the bottom of the sea or into the boat; but how killing the mother can prevent another mother from going to the island, seems to me difficult to understand.

Senator MORGAN.—There must be, according to the evidence in this case, a large number of seals that are wounded, as the skins show it.

Sir RICHARD WEBSTER.—The skins that go to the islands. That the skins show by the animals going to the islands and the shot marks being found in them.

Senator MORGAN.—It is not to be supposed that all of them arrive in due season.

Sir RICHARD WEBSTER.—Of course a romance or suggestion is extremely valuable for the purpose of endeavoring to solve this; but surely is it not an unfair argument in reply to the suggestion to point out that as far as the individual seal is concerned that seal is killed.

Senator MORGAN.—It is not a romance that if there are seals wounded and killed at sea by pelagic hunters they do not reach the islands.

Sir RICHARD WEBSTER.—Have I ever suggested the contrary of that, Sir? I am only entitled to have my argument considered, as I am sure it will be considered by every member of this Tribunal, in the sense in which I wish it to be understood. I have never said they were not wounded. I have never said that seals wounded do not subsequently recover; and may be for the time being impeded in their course going to the islands. But I submit upon the evidence to come to the conclusion that this wholesale distribution of seals all across the coast remaining down off Vancouver Island.

Lord HANNEN.—All across the ocean.

Sir RICHARD WEBSTER.—All across the ocean and remaining down at Vancouver Island at a time when *ex hypothesi* they should have been at the Pribilof Islands I should have thought on that hypothesis it was difficult to shew it was due to pelagic sealing; and certainly in regard to Behring Sea in the year 1892 it could not apply for in the year 1892 there were no pelagic sealers in Behring Sea.

Senator MORGAN.—But does it not apply to those passes through which the seals most go, and in which they are killed in large numbers?

Sir RICHARD WEBSTER.—Then I would have thought it would have driven the seals away from there. It does occur to me—I don't know whether you think it is a remark worth anything at all—that a great amount of driving on the islands might make the seals leave the islands.

Senator MORGAN.—Possibly so; yes.

Sir RICHARD WEBSTER.—It seems to me an inference that may not unfairly be drawn with reference to the evidence that was referred to by the Attorney General to say that the number of seals has increased at sea rather than diminished.

In this connection, Mr. President, to clear away all the subordinate parts that I can, and to leave as little as possible to-morrow, might I call attention to the state of matters in regard to barren seals? The argument of my learned friends disregards the element of barren seals altogether. It is suggested to us by the Tribunal to-day—suggested to me for my consideration—that I am to suppose that seals never suffer from any diseases at all. I am afraid I cannot as an advocate accept that conclusion. I know of no animal, no fish, no bird that does not suffer in the ordinary course of nature from disease, and disease which will at times nearly clear it off; and I should have thought it very strong to suggest that seals, having regard to their life, were the only animals known to the naturalists that were exempt from disease. But I suppose it will not be suggested that every female seal that is born is capable of bearing pups. But even assume it; what does it mean? The hypothesis of the United States Commissioners, under-

stating—I think it is understating, as I shall show in another connection later on—the hypothesis of the United States Commissioners is that there must be at least three million seals in a normal condition and that of that three million seals the very smallest number of females must be 1,500,000. In fact upon their own figures the proper proportion would be something like 600,000 males to about 2,400,000 females; but I am not adopting, for the purpose of my illustration, views of the proper condition of the seal herd, which on the evidence appear to be not well founded. Therefore I am not straining my point by assuming in my own favor what I may call the extravagant relations of male and female, which the United States Commissioners have thought, and the United States Case submits, to be sufficient and proper for this race. I am taking a normal condition of things and assuming three million of seals to be the total of the herd, an understatement as I should suggest, by probably a million at least; but assuming three million it would be 1,500,000 female seals bearing, that is to say having come to the age of three and dying off at the age of 13 or 14 as the case may be. They give for the extreme life something like from 10 to 14 years, and it would be an average of somewhere about 12. That seems to me to be somewhat of an over estimate.

Lord HANNEN.—Twelve years is an average of what? Pup bearing?

Sir RICHARD WEBSTER.—For pup bearing; yes. If I take it to be ten years—it really makes no difference, for the Tribunal can do the figures themselves—I assume for the purpose of simplicity of calculation that 1,500,000 is the total number of female bearing seals necessary for the herd which means that 150,000 seals pass into the barren stage or die every single year.

Mr. CARTER.—You do not mean that is their assumption. You seem to impute it as being such.

Sir RICHARD WEBSTER.—It is really their assumption.

Mr. CARTER.—I think not.

Sir RICHARD WEBSTER.—I have not put it upon you. I will demonstrate it to-morrow from the United States figures. I think the United States Commissioners say in terms that the herd must be about three millions, of which 1,500,000 would be bearing females.

Mr. CARTER.—Not bearing females. You are quite in the wrong about that.

Sir RICHARD WEBSTER.—Indeed I am not; but I shall endeavor to point it out to-morrow that I am correct. The assumption which it will be found the United States Commissioners proceed upon is that the total herd consists of bearing females about 1,500,000. I am much obliged to you, Mr. Carter. I see now what you had in your mind. I have not stated it quite correctly. I stated it from memory. I refer to page 357, of the United States Case. I know now why I made the mistake:

> In order to represent more clearly the enormous herd of seals which it may be supposed at one time frequented the Pribilof Islands, undisturbed by man, these numbers may be multiplied so as to give a total of 3,000,000 seals, 750,000 being born every year and the same number dying from natural causes. Of the 1,500,000 females about 800,000 would be breeding, the remainder mostly too young to breed, a very small number being barren.

I am very much obliged to Mr. Carter for correcting me. I was quite in error; but I had no intention of misrepresenting. The thing I had in mind was the number it would be if that 3,000,000 was increased to the proper amount; and I mistook the figures. I will take the figures as stated: 800,000 for breeding females, and the average life for breeding,

which I have stated. That would therefore mean, assuming them to live an average of ten years, 80,000 passing into the barren stage or dying, granting even that among the rest there were no barren females, and that these are bearing every year. Those 80,000 at least are wholly and entirely lost, so far as the sealing industry on the Islands is concerned. It is not denied that upon the sealing islands they do not intentionally kill females. They take great credit for it. Whether they are right in taking credit or not is a matter which may be worthy of a little consideration.

But assuming, Mr. President, that a zone were established which would prevent the females being killed who had pups dependent upon them, and a close time were established, which would prevent the females being killed that were gravid, I do not hesitate to put before this Tribunal—and I ask their serious judgment upon it—that killing which would take its fair share of females, including these barren females, together with males, would be a better system than one which rejected this altogether. I must not be drawn into the argument, which I want to keep entirely distinct, of what happens to this race of seals, the enormous proportion that are killed by killer whales and other animals, that disappear altogether. I must not be drawn into the consideration of the fact that we are dealing only with the surplus of this race. That is a matter which requires to be most carefully examined, and I must keep it entirely distinct. But I point out that from the point of view of the duty of this Tribunal, namely to find what is necessary for the preservation of seal life, if they are able to define a zone which will under ordinary circumstances prevent the nursing female on whom the pup is dependent from being killed, and such a close time as will prevent the gravid female from being killed, they discharge their duty; from the point of view that those two operations are necessarily wasteful. Then I do not hesitate to appeal to our experience of any other living animal, and to ask the Tribunal to come to the conclusion that a system that takes account of the proportion of barren females would be better than a system that disregarded this altogether. *Ex hypothesi*, unless the stagey theory be found against me, the barren females do not necessarily go to the islands. *Ex hypothesi* the female that has not attained to the sexual desire, or has lost it, would not be tempted to go there in the month of June and July. If, as I have ventured to demonstrate, the stagey season cannot be one during which the seals are all on land, and are not found—except on the island, and if the cause suggested by the learned Senator for the seals being irregular in their times of arrival at the islands be not a sufficient cause, it stands to reason that given the two conditions which I have mentioned:—the protection of the nursing mother while the pup is dependent upon her, and protection of the gravid female,—it is to the interest of the world that is supposed to be longing dying for the blessing of seal-skins, that the barren females should be caught and captured instead of being wasted; and the system which has been lauded with so much praise by my learned friends disregards that annual death or disappearance or that very large number of animals, amounting in their calculation to between seventy and eighty thousand females.—

Mr. CARTER.—On whose calculation?

Sir RICHARD WEBSTER.—On the calculation of the United States Commissioners.

Mr. CARTER.—Seventy or eighty thousand females?

Sir RICHARD WEBSTER.—One tenth of 800,000. Mr. Carter did not do me the kindness to follow me. I have pointed out that on his own calculation there are 800,000 breeding females. They are supposed to continue from ten to fourteen years, bearing pups. Therefore from one-tenth to one-fourteenth of that number must pass into the barren class every year. If Mr. Carter will consider this in the silence of his own chamber, he will find I have not made a mistake; and, if I had, he would be the first to point it out when he comes to consider the matter.

Mr. CARTER.—I would like to understand the matter, but I confess I do not understand how they can go into the barren class by death.

Lord HANNEN.—They do not bear any longer.

Sir RICHARD WEBSTER.—They do not bear any longer. They cease to breed because they no longer have the sexual instinct, and do not happen to bring forth the pup and eventually they die. Those that have passed breeding are what I call the barren females; but really, while admitting that Mr. Carter is my master, and that he can criticise the way in which I am putting my arguments.

Mr. CARTER.—Not at all.

Sir RICHARD WEBSTER.—I trust he will try to follow the substance. The substance is that of the 800,000 breeding females every year, from one-tenth to one-twelfth cease to be breeding females; and I do not repeat myself, because the proposition seems to me, so stated, for the reasons I have given, one which does deserve to be considered.

But now, Mr. President, I want to say one word with regard to a part of the case which in my mind, in one aspect, presents, or would present, more difficulties in the way of the Government of Great Britain, and which I frankly admit at once that if the Tribunal are in a position to deal with the whole question of injury to the seal race ought to be dealt with. I mean the question of the killing of gravid females as apart from the killing of nursing mothers. Here I come to the part of the case which takes me outside Behring Sea and I endorse the arguments presented by my learned leader which I was touching upon on Monday afternoon when the Tribunal indicated that I was only going to a certain extent over ground with which they were familiar.

I must say what I am about to say under reserve because I distinctly contend that the area of Regulations is the same as the area of the right but apart from that nobody who has looked into this case fairly and desires to consider Regulations as apart from prohibition can have any doubt I think what ought to be done. When attack has been so unfairly made upon the British Commissioners let me remind the Tribunal of this one incident in connection with their Report, that they point out themselves the deleterious nature and harmful character of pelagic sealing during the spring months when the gravid females are passing up the coast, and be it right or be it wrong, be it sufficient or be it insufficient they themselves acting with perfect impartiality suggest a remedy which they submit to the judgment of those who have to decide on this question whether to this Tribunal or any other Tribunal.

The evidence shows, and I am not going in any way to minimize it or cut it down, in so far as it may tell against me, unquestionably that a considerable number of gravid females are killed during the coast-catch taking it from our own point of view, I do not think it could be put lower than 30 to 40 per cent, and I think my learned friends might fairly say as a criticism that if in the coast-catch there were as many females as males, and that most of those females other than the virgin females that might be passing up would be in the gravid condition. I

state this, as much as I can against myself, whether it is 30 or 35 or 25 per cent, ought not to make any difference in the mind of the Tribunal.

I have recognized in my argument that the theory of useful game-laws is that such a wasteful method of killing would not be permitted, and speaking to civilized men—men of the highest civilization and cultivation of all nations, I shrink from putting any argument that might not be thought to commend itself to their minds, and for the purpose of my argument, though I think I could satisfy this Tribunal, if it was at all important for me to follow it up, that in the evidence of many of the witnesses who have spoken for the United States, there is very great exaggeration, that the number of females gravid and supposed to be gravid is a great deal exaggerated, yet I cannot shut my eyes to the fact that taking the British evidence as it stands there is quite sufficient proof of the killing of gravid females during those earlier months to justify some regulation in that regard in order to prevent even that percentage.

Now what does that mean? It means this; that you ought to avoid the pelagic sealer being tempted to attack the herd at a time when it is composed principally, or largely, or to any great extent, of gravid females. We are not without statistics, and not without *data* enabling us, to a very considerable extent, to assist the Tribunal in coming to a conclusion in that respect. In the first place, the date at which the whole herd arrive at the Pribilof Islands is pretty nearly fixed. I have stated it more than once myself in the course of my argument to-day. It may be taken roughly to be about the 20th of June. It is stated by Mr. Stanley Brown, quoting from memory, to be the beginning of July, when the Rookeries are about all filled up. The United States Commissioners themselves say they arrive early in June up to the end of the month, and the harems are complete early in July. That will be found at pages 325 and 326. Of course, in a matter of this kind, there would be a difference of opinion; but it is not an unfair representation to take that.

What do we know further? We know further that, during the latter part of May and the beginning of June, the animals "bunch up", as it is called, and travel rapidly from the Unimak Pass to the Pribilof Islands; in other words, in the latter part of May, they are found *in* Behring Sea and not *outside* Behring Sea.

Mr. Justice HARLAN.—Including the females?

Sir RICHARD WEBSTER.—Yes; I confine my attention to females. It is not, for the purpose of this argument, necessary to consider the killing of males; I consider the question of interfering with that kind of killing which is said on all hands to be a kind of killing to be restrained.

Bearing that, then, in view, the first date is, within what time, or up to what time should pelagic sealing be prohibited altogether? I pass from zone, Mr. President, and deal now entirely with the question of close time.

Now it was very properly if I may say so put by a member of the Tribunal, whether or not, adhering to the date mentioned by the British Commissioners, the 1st of July, coupled with the zone indicated by Sir Charles Russell, we were not giving away a point which the pelagic sealer or Great Britain on behalf of the pelagic sealer might fairly make. My answer is it seems to me fairly not for this reason—that you cannot always calculate on a particular day. We have the evidence in the past, sometimes the seals are a few days later and sometimes a few days earlier. Sometimes they have begun to arrive in the middle

of May, and at other times not till about the middle of June and it seemed to me, in connection with the zone, to say that no pelagic sealer should go into Behring Sea at all till the 1st July, gves an ample margin, for all the bunched up herd of female seals desirous to get to the Pribilof Island to get there in safety without any attack upon the herd as it was travelling to the islands. There I am tempted to remind you, Mr. President, of a fact called to our attention by Mr. Justice Harlan—in my judgment not without significance, and that is that the great majority of sealing vessels interfered with in the Behring Sea were upon the migration route—you know the route I mean from the Passes to the Islands.

It is not conclusive because it may be that harm might be done elsewhere but at any rate it shows that in those years a number of those vessels saw the migration route was a place where pelagic sealing might be successfully carried on. Therefore, taking July the 1st as the date up to which no pelagic sealing should be carried on in Behring Sea, you secure the whole herd being in Behring Sea, as far as the herd is concerned, and in addition to that, you leave the zone that was spoken of as a further protected belt, to which I need not give a further reference.

Now, I do not know if the observation as to commencing sealing at a certain date was directed as much to inside Behring Sea as outside; but fixed dates can be easily observed. Vessels can only enter through certain Passes; they are not likely to go right the way round to the West. It is easier to "police" the matter, to use my learned friend, Sir Charles Russell's phrase, if the date is fixed; because vessels must keep logs and, of course, that would enable a check to be kept.

Now, I come to the part outside; and a question was put by a Member of the Tribunal, What information can you give as to the 1st of May being sufficient for vessels clearing from those ports?

Let us take the ordinary state of things. I am assuming Regulations applying to sailing schooner. This Tribunal will be able to have assistance in this matter practically from some of its Members. If a schooner could make in the day of 24 hours a course of from 100 to 120 miles, I mean a course on the Chart, she would do pretty well. Of course, a schooner will sail 10 or 12 or 13 knots an hour, but that is only the way that the wind will take her; and she might have strong adverse winds. The distance is about 1,560 miles from Unimak to Victoria; and, allowing a vessel to clear away by the 1st of May, if she went post haste, you could not calculate her getting there before the middle of May.

But that is not the course the vessels would take, because they do not go out for the straight voyage. They go out for the purpose of sealing, and the Commissioner's Report shows this, that, as soon as they come to the seals, they begin to seal and follow them up, and it is in order to let the female part of the herd, which is well ahead, get still further ahead, and get into the Behring Sea by the end of May or the beginning of June that that suggestion is made.

Lord HANNEN.—Is it your suggestion that until the first May all sealing should be prohibited everywhere.

Sir RICHARD WEBSTER.—Until the first May no sealing vessel should clear from any of those ports.

Lord HANNEN.—Suppose they do not clear from those ports, but come from, I do not know where.

Sir RICHARD WEBSTER.—I meant as far as Canadian vessels and United States vessels are concerned they should be licensed and clear

from those ports, and not be allowed to catch seals anywhere before the first May.

Lord HANNEN.—Down to the Equator.

Sir RICHARD WEBSTER.—I was really dealing with the area in question.

Lord HANNEN.—And I was exaggerating, of course. I wanted to know if you meant there was not to be any limit of area.

Sir RICHARD WEBSTER.—I do not want to pass an argument strongly in my favor, but that bears strongly on the question of ambit under Article VII, but vessels leaving for sealing in the gulf of Alaska and Behring Sea, should not clear till the 1st of May, and not enter Behring Sea until the 1st July. Those are two questions as to time which we, desirous to assist this Court honestly and fairly, and not to put a case to see how much we can get out of it, have considered to be fair, and if an advocate may say so, have made a judicial suggestion with reference to the matter in this regard.

Mr. Justice HARLAN.—Your suggestion would leave schooners clearing from British Columbia in America on the 1st May entirely free from that time forward in the North Pacific and in the Aleutian passes.

Sir RICHARD WEBSTER.—I do not know. In the Aleutian passes the evidence is universal that, except for an Indian in his canoe, no pelagic sealing is possible in the Aleutian passes, and if you look at the photograph of the Aleutian passes and see the sea running through like a mill-race, you would see that any pelagic sealing in boats is an impossibility. It has not been carried on in the Aleutian passes by any pelagic sealers. Now I want to make this observation.

We were asked, why not stop sealing until a certain day instead of sailing on a certain day, because from experience it has been found to be extremely difficult effectively to guard against breaches of such rules. You have to trust men of not the highest moral character, though they have, of course a certain amount of self-respect and good feeling; but to say that you may go out during the month of April, providing that you do not seal, the vessel being equipped for sealing is rather tempting under certain circumstances, especially if a good many seals were about. And I do not think that you, Mr. President or any member of the Tribunal, will think it is any worse to lay down or suggest a Regulation that will work effectually rather than one which can be evaded.

It does seem to me to be a suggestion that the vessels should clear from those ports not before the first of May would ensure for reasons I will briefly submit to-morrow, the advance herd of female seals being safely in Behring Sea before they can be attacked.

Sir JOHN THOMPSON.—I understand your view to be that licenses should be only procurable as regards British subjects at certain ports. I do not know if you have mentioned the United States ports.

Sir RICHARD WEBSTER.—No, I have not, but it was not because I had over looked it. It was, because I did not think the Tribunal would think I was departing from the lines laid down by the Attorney General. I think the license system is most important, and also that they should be obliged to keep logs.

Sir JOHN THOMPSON.—But you have not mentioned the names because it might involve a difference in the time of starting.

Sir RICHARD WEBSTER.—San Francisco and Port-Townsend in the United States and Vancouver and Victoria in British Columbia. I am not sufficiently expert to know if some other time should not be allowed with reference to those places, but it is a question to be calculated.

Lord HANNEN.—You must suggest something in reference to it.

Sir RICHARD WEBSTER.—I am obliged to you, my Lord. It has been pointed out to me that there might be a difference between the various ports, San Francisco and Port-Townsend, and by to-morrow morning I will consider the distances.

Senator MORGAN.—Have you any evidence to show that an Indian with his canoe could fish successfully in the Aleutian passes, and a boat not?

Sir RICHARD WEBSTER.—Strangely enough there is evidence of the Indians from the shore catching some seals in one of the Aleutian Passes but there is no instance that I know of a pelagic sealer sending out a boat from his ship. I do not know, Senator, if among your other accomplishments you are a sailor, but if so you would hardly think that a schooner could remain with the water rushing through there, and pick up a boat she had sent out in the morning, safely in the evening.

All I can say is I do not think, as far as I am concerned it is possible. I do not think there is any pelagic sealing possible there. By entering Behring Sea I mean entering the Passes—I do not draw any distinction—I am willing to agree that the mouth of the Passes, should be considered the Behring Sea.

Marquis VENOSTA.—You think by the month of June the female seals are practically in Behring Sea and there is no considerable number of gravid females along the eastern shore of the Alaskan Peninsula, going out to Kadiak.

Sir RICHARD WEBSTER.—On the evidence, by the end of May, the gravid seals are, are least as far as the western side of the Kadiak Island, and they then will be going into Behring Sea while the Pelagic sealer will be starting in the middle of May and he will not catch them up, and will have no temptation to, because in so far as he would want to carry on his business, he would not go in till the month of July. He will therefore utilize May and June. If we think of what the practical inducements are, he will not rush off to the neighbourhood of the Passes to take the chance of a few seals and have the herd of male seals which in the evidence are streaming up this place during the last part of May all through June and in July, practically speaking the temptation will be to hunt off the coasts of British Columbia during May and June and to go and hunt in Behring Sea when they go in.

Mr. Justice HARLAN.—Before you leave the map there is evidence in the case showing in July and August over all the sea north of Aleutian Islands and west of it are a great many seals.

If the vessels entered Behring Sea on the 1st July, of course during July, and August they would be at liberty to pursue those.

Sir RICHARD WEBSTER.—Except those within the zone.

Mr. Justice HARLAN.—But the sea would be clear from the Aleutian Islands to whatever zone you spoke of?

Sir RICHARD WEBSTER.—That is my submission. That is what I wished and desired to bring to the Tribunal as a reasonable Regulation.

I apologise to the Tribunal for having kept them so late today.

The PRESIDENT.—The Tribunal will meet to morrow at 11 o'clock; take the recess at one, and adjourn at half-past three.

[The Tribunal thereupon adjourned till Friday, the 16th of June, at 11 o'clock.]

FORTIETH DAY, JUNE 16TH, 1893.

Sir RICHARD WEBSTER.—Mr. President, I will endeavour, to the utmost of my power, to compress the observations that I desire to make in conclusion, though I am quite sure that the Tribunal would wish that I should not spare anything that I really feel to be material. I will, as far as possible, avoid anything except that which seems to me of first class importance.

I was dealing with the possible control of pelagic hunting outside Behring Sea, always remembering, and I ask the Tribunal to remember, that I take this under protest and contending, as I have to argued, that the Pacific Ocean south of the Aleutian Chain is not to be the subject of Regulations by this Tribunal. My proposition was that by the end of May the female seals are practically to the west of Kadiak Island and going into Behring Sea. That was the statement that I made. There is a mass of testimony about it; I have endeavoured, as far as I can, only to pick out some of the most material passages for the purpose of citation. I think they will be found best in the United States Appendix, volume 2. I by no means suggest they are all exactly uniform, or that my statement is exhaustive; but these are, at any rate, material on the point I am mentioning. Page 217, Anderson:

While engaged in hunting during the past 18 years, I have killed more or less fur-seals. I usually first fall in with fur-seals off Cooks' Inlet,

That is just to the east of Kadiak Islands.

about the 1st of June.

Then, page 215, Avery:

I start the season off Yakutat. The first seals are seen about April the 1st.

Then Foster, page 220:

The seals appear off Cooks Inlet about the 1st of May. They appear off Unga, about the 1st of June.

That is close by Unimak.

Then, page 222, Rohde:

I have resided in Alaska 6 years, and in all that time followed the calling of a hunter. Beginning at Cooks Inlet in the Spring, we find seals off the Inlet in May, travelling westward along the coast towards the Behring Sea.

Then Tolman, page 222:

The seals are taken off Kadiak Island about the 1st of June.

Then Andersen, page 223:

I have been along the coast from Prince Williams' Sound to Sennak Islands. Seals are first seen at Prince Williams Sound about the 1st of May.

Then Muller, page 222:

I start the season off Cooks Inlet. The first seals are seen about May

He does not say which part of May, and I should not have read that. Then at page 224 there are a large number of Indians (some 7 or 8) who make an affidavit and they say.

Fur-seals always appear in the vicinity of Cooks' Inlet early in the month of May,

and 14 more Indians at page 225 say the same thing.

Then Gohen says:

I have observed that fur-seals first appear in the neighbourhood of Cooks Inlet in small schools about the middle of April coming from the Southward and increasing in number until the latter part of May travelling along the coast of the main land from eastward to westward but never entering Cooks Inlet above Anchor point.

Then Gregoroff, on page 234, is the same as Frank Korth page 235 says:

In the early part of the season the males are the most numerous a few females being taken towards its close in the latter part of May.

That is at Prince William Sound.

And Kwam says at the top of page 236:

Seals first appear in Prince William Sound about 1st May, and were formerly quite plentiful, while now they are becoming constantly scarcer. I do not know the cause of this decrease. All the seals that I have seen killed were females and the majority of these were pregnant cows.

There are a large number of other affidavits, but I have cited sufficient to show the class of evidence on which I rely for the statement that the pregnant females that formed part of the herd come after the bulls. The United States Case and ours is this; they are both the same, that they appear in this order, first the bulls, then the pregnant cows, then the holluschickie and last year pups.

General FOSTER.—That is not our contention.

Sir RICHARD WEBSTER.—If it is not the contention it is at all events the United States Commissioners' evidence on the point. If there is another contention we shall no doubt hear it later on. The important thing to fix is when they get into Behring Sea and the Islands, and though the evidence is extremely abundant I will be content with very few references. I will take one from the United States Commissioners' own report, which is to be found at page 325 of the United States Case. This is at the Islands.

The cows begin arriving early in June, and soon appear in large schools or droves, immense numbers taking their places on the rookeries each day between the middle and end of the month, the precise dates varying with the weather. They assemble about the old bulls in compact groups called harems The harems are complete early in July, at which time the breeding rookeries attain their maximum size and compactness.

And if you will turn to page 385 you will find a table—I mention this now particularly in consequence of the interlocutory observation of General Foster—the table which is appended by the United States Commissioners to their report, for a series of years, and you will observe the columns, and notice in every case, taking the Pribiloff Islands, the bulls come first, then the cows, and then the pups. If you would kindly look at the dates, 1872, May 13th bulls: cows June 3rd: pups June 13th. In every case the order is that which I give—bulls first; then cows; then pups.

Mr. Justice HARLAN.—There is no table there for the bachelors.

Sir RICHARD WEBSTER.—As a matter of fact you will find that the holluschickie are stated to come with the pups.

Mr. Justice HARLAN.—No, at page 325 it says they begin to arrive early in May.

Sir RICHARD WEBSTER.—Well, if that is the point, of course it is quite immaterial to the contention I am upon—absolutely immaterial, if that was the correction intended by Mr. Foster.

General FOSTER.—That is the correction, that the bachelors come before the females.

Sir RICHARD WEBSTER.—If that was what General Foster meant I will take it from him, but it is not material for my purpose.

Now would you kindly look at the column of cows? This is what I want to direct your attention to first, the landing which takes place 180 or 190 miles from Unimak Pass is the 3rd June, the 8th June, May 24th, June 7th, June 5th, May 25th, June 8th, June 16th, No record, June 8th, No record, No record, and so on; June 10th, June 6th, and June 11th. If you go over to St. George's Island, the next one in the cows' column, you will see June 7th, June 9th, June 13th, June 8th, June 9th, June 9th, June 9th, June 6th, June 7th, June 1st, June 8th, May 31st and the 3rd June. Therefore, I point out that what I have indicated is practically—I will not use the word admitted—I do not suggest they would not say anything but what they believed to be a matter of fact is practically the view taken by the United States Commissioners, namely, that the cows are landing on the Pribilof Islands very often in the early part of June and sometimes at the end of May which shows they have passed Kadiak Island by the date I have mentioned, namely, the end of May.

Now in that connexion I ought perhaps to read a passage from Mr. Merriam's Circular Letter, page 414 of the 1st volume of the United States Appendix to their Case, paragraphs 3 and 5:

> Returning the herds of females move northward along the coast of California, Oregon, Washington, and British Columbia, in January, February, and March, occurring at varying distances from shore. Following the Alaska coast northward and westward they leave the North Pacific Ocean in June, traversing the passes in the Aleutian chain, and proceed at once to the Pribilof Islands.

Then paragraph 5:

> The pregnant cows begin arriving early in June, and appear in large shoals or droves, immense numbers taking their places on the rookeries each day between June 12th and the end of the month, varying with the weather.

I have at any rate adduced before the Tribunal evidence in support of the statement I made yesterday from sources that my learned friend will not be able to impeach. I only need, that I may give the information to the Court, give the references to paragraphs 637, 639, 648 and 651 of the British Commissioners' Report, because there will be found evidence giving the authority for their statement of identically the same character, namely, showing the entry of the seals into Behring Sea, and their passing along the parts of the Islands at the same time.

Now, the last observation I have to make upon this part of the case is as to whether the time that I suggest from the 1st of May is sufficient. I was asked by a Member of the Court yesterday to make a suggestion with regard to varying dates, if any, of leaving the four Ports mentioned. I propose to hand in on Tuesday the Regulations in writing; and I will suggest then to the Tribunal dates getting the best information that I can as to the actual distances and the difference of time that ought to be applied. I do desire to say, with reference to the general consideration, taking Victoria and Port Townsend, one a United States and the other a British Port, they are about the same distance, 1,560 miles, direct in each Case, and 1,850 following the coast. The only suggestion that could be made would be that the sealers would go straight up to lie outside, (for they would not be allowed to go inside the Passes) to avail themselves of the hunting in the last few days of May. Well, from the best information I can obtain, and perhaps Members of the Tribunal are quite competent to judge, under ordinary circumstances the lowest average voyage, with ordinary winds, that you could allow for a schooner to get over that 1,560 miles in ordinary circumstances

would be 15 days. Of course, if she had strong gales always blowing from the Southward and Eastward, she might go quicker; but what happens then? That would mean 15 days' waste if she has to go straight up and is not sealing on the way. The experience, as appears from the United States Commissioners' Report, is that the sealers come out when they can along the coast and do harm, as I have admitted, in the months of February, March and April in that coast catch. It is entirely for the Tribunal. In making these suggestions we have not been guided by any feeling of trying to get the best possible bargain that could be suggested for the British Sealer. In making these suggestions we have considered, that looking to the practice of sealing and the way in which done, the result of such Regulation would be that the female herd would be well into Behring Sea before they could be attacked by the pelagic sealer, and you know, of course, that in Behring Sea they will be safe until the 1st of July, and always safe within 30 miles of the Islands.

Now, the next suggestion my attention was asked to was, whether there was not evidence of sealing in the passes of the Aleutian Islands. There certainly is not beyond the instance I mentioned of a native who resided near one of those passes; but I stated my answer, on information from the British Commissioners' Report, was that the character of the Passes was such that no pelagic sealing was really practicable in them. My attention has been called to Captain Hooper's affidavit on this point in the United States Counter Case, at page 232:

Systematic observations of the movements of the seals in the Pacific Ocean, near the passes, at this season of the year is impracticable.

Lord HANNEN.—What season is he speaking of?

Sir RICHARD WEBSTER.—He is speaking of the season when the seals are passing through, if you look a little further up.

General FOSTER.—It is dated the 30th of November.

Senator MORGAN.—It is in the winter.

Sir RICHARD WEBSTER.—I will show that it makes no difference to the point I am upon. This is the description of Captain Hooper's.

Almost constant gales and thick weather prevail. In the influence of the strong current though the passes the sea is very rough.

that would not depend on the season, the strong current.

And even were it possible for a vessel to remain there, few, if any, seals would be seen. Under such circumstances the seals travel very fast and remain under water except when forced to come to the surface to breathe, and then only the nose is protruded above the water for a moment. In bad weather on the sealing grounds in the Pacific and Behring Sea the seals disappear so entirely that the Indian seal hunters (erroneously) believe they go to the bottom and remain there until the weather becomes better.

My point is quite independent of the particular season in which that was observed. It is clear from Captain Hooper's description of the Passes, I am sure that nobody, without evidence at any rate, would assume that sealing in such a place was practicable.

But Mr. Elliott in writing to Mr. Bayard, on the 3rd of December, I am reading from the 50th Congress Reports, 2nd Session of 1889, Executive Document N° 106, page 95,—a part of the letter is cited in the third Appendix but this is not,—he says:

Therefore, if you will glance at the Map of Alaska, you will observe that the convergence and divergence of these watery paths of the fur-seal in Behring Sea to and from the Seal Islands resembles the spread of the spokes of a half-wheel; the Aleutian Chain forms the felloe, while the hub into which these spokes enter is the small Pribilof Group. Thus, you can see that as these watery paths of the fur-seal converge in Behring Sea, they in so doing rapidly and solidly mass together thousands and tens of thousands of widely scattered animals as they travel at points 50 and even 100 miles distant from the Rookeries of the Seal Islands.

Here is the location and the opportunity of the pelagic sealer. Here is his chance to lie at anchor over the shallow bed of Behring Sea 50 to 100 miles distant from the Pribilof Group where he has the best holding ground known to sailors, and where he can ride at any weather, safely swinging to his cable, and in no danger from a lee shore if it should slip. The immediate vicinity, however, of the Aleutian Passes is dangerous in the extreme to him. There he encounters terrible tide-rips, swift currents and furious gales formed through the entrances, with the very worst of rough, rocky holding ground.

Therefore I do not think I have overstated this matter. This is in a letter to Mr. Bayard by Mr. Elliott. It describes that and there is no evidence to the contrary in the whole of these papers. The suggestion that pelagic sealing when the vessel must be anchored or lying to while her boats go out could take place in such passes will not commend itself to those who have experience in nautical matters of that sort.

Senator MORGAN.—How is it about the approaches to those passes.

Sir RICHARD WEBSTER.—I should have thought outside of the influence of the currents there was no difference. It was part of the Behring Sea on the one side and part of the south Pacific Ocean on the other. There is no evidence about it. The whole point put to me as I understand it was intercepting the seals *en masse* as they pass through the Aleutian Island passes.

Now there are two subjects which my learned friend Mr. Robinson, to whose assistance I have been immensely indebted, has been good enough to say he will take under his charge. The one is the allegation of waste in connection with pelagic sealing itself—waste by killing and by loss of those killed and wounded—by supposed missing or wounding a subject on which I say with all submission there has been on the part of the United States very great exaggeration, and also including the incident of green hunters upon which my learned friend Mr. Coudert was so eloquent—that we insisted that there should be green hunters on board the schooners whose function was to wound and not to capture in order that they might be taught this trade. As a matter of fact no such rule has ever prevailed or been in force at any time in the sealing vessels coming out from British ports and the other subjects to which my learned friend Mr. Robinson will if necessary direct the attention of the Tribunal is the question of the supposed immunity from raids which is claimed by the United States as being incident to their management of the Islands. There certainly is a body of testimony in these papers to show that in so far as any claim of merit is to be put forward on behalf of the United States on the ground that they have been protecting the seal species from raids, their guard has been anything but an efficient one. Those two subjects are not the limit of the subjects my learned friend Mr. Robinson will refer to of course, but he has been good enough to say that he will take those under his charge.

Now subject to handing in the written proposed Regulations I have finished the consideration of the Regulations upon the assumption that the Islands are properly managed, but there remains a very important part of this case to which again and perhaps I hope almost for the last time, I have to ask the close attention of the Members of the Tribunal and that is the question of the real cause of the decrease. You will remember that by the Treaty you are directed by Article VII to find out what Regulations are necessary for the proper protection and preservation of the fur-seal. I have already indicated that the scope of your jurisdiction is in our submission in Behring Sea. Now I want to direct your attention to the bearing and meaning of that word "necessary" because upon the evidence now before the Tribunal, and I ask every member of the Tribunal to be good enough to give me his judgment in

this matter, it can be demonstrated that any special failure and any special decrease of the seal upon the Islands in the years 1890, 1891 and 1892, and *a fortiori* earlier, is not due to pelagic sealing. In order to make out their case for the extraordinary demand which is made by the United States representatives in their so called Regulations, which are in fact no Regulation at all, but an absolute and complete prohibition—in order to support that demand they have suggested to you that the decrease is due to pelagic sealing and not to action upon the Islands.

My friend Mr. Coudert, Mr. President, pressed with the fact that there was evidence to be dealt with protested in the first instance against the Tribunal considering the Islands at all and he pointed out that which is true, that from the point of view of determining Regulations upon the Islands this Tribunal has no jurisdiction but he admitted that it was most material with reference to the question how the actual decrease was caused and he attributed it to pelagic sealing in general terms, he was asked by you whether if he was going to attribute the loss on the Islands or the diminution of the seal race upon the islands to pelagic sealing it was not necessary at any rate to attempt to put some proportionate figure or some figure that would show that pelagic sealing had been a sufficient cause to produce the result. Those figures have not been forthcoming. I will show before I close to day they cannot be forthcoming, and I will submit to the Tribunal what the real cause of the diminution is. Now there are two causes suggested by the United States Commissioners. You will find the cause I believe suggested at page 349, of the report of the United States Commissioners that is the United States case:

The life of the seal herd, then, depending as it unquestionably does on the constancy of the number of births, can be endangered from two directions. First, from the killing of fertile females; and, second, from the excessive killing of males, carried to such an extent as to prevent the presence of the necessary number of virile males on the breeding rookeries. To one or the other of these causes must be charged the great change that has come upon the rookeries within recent years, and the commercial destruction with which the sealing industry is now seriously threatened.

We are firmly of the opinion that an impartial examination of all the facts in the case will show conclusively that the latter of the two possible causes has had no appreciable part in the destructive work that has been accomplished.

I accept, Mr. President, the test put down by the United States Commissioners and I propose to examine as carefully as I can what is the answer that should be suggested to the two questions which they have put on page 349.

There are other passages to which I should give a passing reference to make my citation complete, though practically speaking, they are only incidentally part of the same proposition. Take the bottom of page 361,

While there is no doubt that in some instances excessive driving has been allowed, that seals have been driven further than is actually necessary, and that proper care has not been taken to eliminate the non-killable seals as far as possible before the driving is well under way those are matters that are so entirely under control that a proper adjustment may be secured at once.

On page 362:

The assumption that driving is seriously injurious to the reproductive powers of the male is doubtless unfounded, being quite contrary to the declared belief of Captain Webster and other sealers of long experience. Against every assertion of this kind it is only necessary to put the fact

please note these words, Mr. President

that there is no evidence of the lack of virility on the rookeries, but, on the contrary, it is evident that there is a surplus of it at the present time, unless, indeed, it is assumed that harems are defended and held against the most ferocious attacks, often at a loss of much blood and muscle, by impotent seals.

Seal killing on the Pribilof Islands has been and is conducted on the theory outlined above, that the male seals only should be killed, and of these a limited number whose age falls within certain narrow limits, and that the female should be spared at all hazards. The same principle controls the killing on the Commander Islands and, as far as we know, wherever and whenever the operation has been subjected to intelligent control.

And on page 378, the bottom of the page,

In addition to the establishment of such regulations as would practically suppress pelagic sealing, it is strongly recommended that killing on the islands be subjected to somewhat more strict and competent supervision. While it is not believed that any serious consequences have resulted from looseness in this respect, the interests involved are so important, and in some respects so complicated, that too much care can not be given to the selection of the proper persons to be intrusted with their conservation. The practice of frequent changes in the government agents is deplorable. They should be so familiar through association and observation with the appearance of the various rookeries as to be the first to notice any changes which may take place. They will thus be enabled to determine annually the number of seals which may be taken with safety and from what rookeries, whether the driving is properly conducted, etc., and their whole efforts should be directed to the preservation of the seal herd in its normal condition.

Mr. President, all those observations I ask the Tribunal kindly to bear in mind in following my argument this morning on this particular point.

Now I propose to demonstrate this, that through a long series of years in the face of warnings brought by their officials upon the islands to the notice of those who could control this matter, an excessive number of males has been killed, that the harems instead of diminishing in size, per virile bull, as the Commissioners state, I will point out to you presently, you would, expect them to do, and they ought to do if it is true that the loss is due to the killing of females, and not to the partial destruction of virile males; that the harems have been increasing in size and number per bull and it is upon the evidence upon both sides; that instead of there existing upon the island the active and energetic contests of the virile males striving for the possession of the females, there is abundant testimony that during the last four or five years the bulls upon the Pribilof Islands have been in a deteriorating, depreciated, and partially impotent condition.

Senator MORGAN.—Is there any testimony showing where these superannuated bulls go after they lose their virility, Sir Richard?

Sir RICHARD WEBSTER.—Yes, Sir, there is abundant testimony they lie behind the rookeries alone, with cows passing by them, and paying not the slightest attention to them, nor they to the cows, and instead of fighting for the cows, as they would do when they were in a virile and active condition, they lie taking no notice of the cows whatever.

Senator MORGAN.—They do not come in with the holluschickie, or the others.

Sir RICHARD WEBSTER.—No.

Senator MORGAN.—They do not haul out.

Sir RICHARD WEBSTER.—Oh, yes, they haul out. I do not think you can have quite followed my point.

Senator MORGAN.—On the shore?

Sir RICHARD WEBSTER.—Behind the rookery grounds, away from the place where the females are, they lie possibly dreaming of good times in the past; possibly thinking, as a member of the United States staff himself observed, of the good times they had been having in the past, but paying no attention to the invitations of the females round them.

Senator MORGAN.—What I want to get at is, do they herd together?

Sir RICHARD WEBSTER.—That depends on what you mean.

Senator MORGAN.—Do they go with the holluschickie.

Sir RICHARD WEBSTER.—No, I said not as distinctly as I could. They do not go with the holluschickie; they come with the other bulls, there practically being no fighting left, as I shall show presently, they come out on the ground where they previously came out, and when the cows come, instead of paying attention to them, they pay no attention at all. Nobody will deny the materiality of these points. These are points that invite answer; and in selecting that which is important for this Tribunal to consider, I have selected that which in my respectful submission must be answered if our Case is going to be destroyed in regard to this matter. The whole point of the contention on this point is this: the United States contend that pelagic sealing, and pelagic sealing alone, is the cause of the diminution and deterioration; recognizing that the other cause may be most potent, they deny in their argument that it exists. I am going to examine this position from two points, first to show the decrease of seals and decrease of virile males has existed markedly for a time antecedent to the period when the pelagic sealing could have any effect at all, according to the United States contention; and, further, that the other result, namely of the diminution of harems around virile bulls in their full vigour has not occurred, but, on the contrary, so far from it having occurred, the evidence, when it is looked at and examined upon both sides, shows that there has been an increase of cows per virile bull. As I do not wish to refer again to break the sequence of my argument by reference to other passages of the Commissioners' Report, I had better, perhaps, make good my point that, in addition to the passage I read from page 349, in which they recognize that one of the causes may be the loss of sufficient virile strength upon the rookeries, they also call attention to the importance of considering whether the harems have increased in size or not. I call attention to page 344 of the United States Case:

A considerable decrease in the number of female seals upon the breeding rookeries might not be noticed at first where total number is so large, but in two or three years the effect of this loss would be felt in the class of killable seals, and might there be quite evident. The loss in one class would thus follow surely but some what behind the other in time. When the diminution in the number of killable seals became notable, attention was at once drawn to the breeding rookeries, and it was found that they were being depleted. Thus Captain Webster declared: "The great destruction has been among females. Formerly there would be, on an average, thirty cows to one bull; now they will not average fifteen".

I shall show you presently, and I shall ask you to note it in passing, that in Captain Webster's deposition in support of the United States he has not said a word as to the diminution of the size of the harems. I will show you what the facts are from witnesses who do speak to it. That statement was thought to be of so much importance it was actually repeated by the United States Commissioners at page 350.

I begin at the bottom of page 349 which is the last reference I make, to show the importance of these questions.

The polygamous habits of the fur-seal have already been described, as well as the separation in hauling out of the holluschickie or younger males from the breeding rookeries. The battles among the older males for places upon the breeding grounds have long been described as one of the peculiar characteristics of the species. A younger male is obliged to win his right to a harem by conflict with his older brethren already in possession. Many thousands of virile young males lie at a considerable distance on the hauling grounds, ready to engage in a struggle for a place in the affections of the female seal should a favorable opportunity occur.

That is when they get old enough.

Notwithstanding the depleted condition of the rookeries, these conflicts and struggles still go on. They went on last year and also in 1890.

I shall have to call attention to the evidence about this.

This condition of things is utterly incompatible with any theory which assumes a scarcity of virile males.

I quite agree.

The evidence of the most reliable and credible observers goes to prove the same thing. Mr. Redpath and daptain Webster have already been quoted as declaring that it is among female seals that the great scarcity exists, but it is worth while here to repeat the statement of the latter, that formerly there would be on an average thirty cows to one bull: now they will not average fifteen.

I have already told the Tribunal what they will find when they come to examine Mr. Webster's affidavit.

Now, Mr. President, I propose to argue this as closely as I can and without unnecessary repetition to show you what the evidence is upon this matter, and first I will deal with it *à priori*. I will ask you to take before you the two diagrams of the United States Commissioners on which I have put the numbers, so that you may compare them side by side. They are the diagrams on pages 355 and 356 of the United States Case, but by looking at them side by side and having them at once before you, you will observe the contrast, and it is an extremely important matter. I will show you presently, Mr. President, the basis upon which these diagrams are compiled involves one or two very important fallacies, but for the moment I merely argue upon the assumption that they are correct. The first one which is taken from page 352, diagram A, shows the natural condition of a herd of 40,025 male seals; and I think the Tribunal entirely understands it—if not I will explain it in two sentences.

The number of seals is indicated by the height of the line from the bottom running from 10,000, 5,000, 4,000, 3,000, and so on. It is stated perfectly correctly that the total area of the diagrams is proportionally to the total number of seals in the herd. That is stated at page 353. There is no dispute between the United States representatives and ourselves as to what these diagrams show. The natural condition of things shows 13,620 breeding bulls. The artificial state of things shows 1,980 breeding bulls. If you compare the yellow area in the second plan with the yellow area in the other plan, the year sare the same 7 to 19; the lines are proportionate and the breeding bulls are supplied from the young bulls that are left and not killed or supposed not to be killed after 5 years—the stock for replenishing in the one case is 560 and in the other case 3,500—that is just about a seventh left and the breeding bulls are 1,980 in one case and 13,620 in the other. I want to ask in the first place upon what theory such a reduction can be justified of taking down the bulls which are provided by nature to replenish the stock to about one-sixth of their number, because you will observe it is 1,980 on what they call the properly regulated killing in the new condition and it is 13,620 on what they assume to be the normal conditions?

Now, Mr. President, you put one or two questions the other day to my learned friend, Sir Charles Russell, and I think also to myself which require some notice. You asked if there was any evidence in the Case of other polygamous animals whether the production of male and female is about equal. I may say that there is no difference with regard to seal life. Both parties are agreed, as far as we can tell, the births of male and female are about equal. The United States people say, when they used to kill pups in the autumn for food when they had the opportunity of selection, they found, if they wanted to kill 2,000, they had to examine 4,000, in other words, they generally had to exam-

ine double the number in order to select the males. I have investigated that matter as well as I could from the sources at my disposal, such as Buffon and other books on natural history, and, as far as I can find out in the case of polygamous animals, there is no instance of a birth of a larger number of females than males. As far as I can find anything from the books of natural history, they appear to indicate, notwithstanding that animals are polygamous that the birth rate is equal. If you will only think of the cases which we know, such as horses, sheep, deer, pigs, and speaking of wild animals, the buffalo, which is a very notorious instance and perfectly well known, all the evidence points to the numbers being equal in those cases, and therefore the first observation that you have to make is this, that in reducing the stock from which the virile males should be chosen, you at once undertake a responsible duty, and you ought to be satisfied that the data upon which you act are sufficient.

Now, Mr. President, would you kindly observe at once here that the data upon which the United States proceed is without any authority in one respect. They assume the bull to have its virile powers for no less than 12 years. They assume the bull to be in a breeding condition from its 7th year to its 19th year. There is absolutely no evidence upon it. All the evidence which you can collect from those who have studied this matter for years is that about 6 is the outside number of years that you can assume that the bull is able properly to perform its virile functions. I will read from Mr. Bryant who has made affidavits for the United States who was on the Islands up to 1877, but never there afterwards, and who was and is unquestionably from past experience a very considerable authority, cited, as Mr. Foster reminded me yesterday, by Mr. Allen more than once in connexion with this matter in fact, I am not sure that he did not write this chapter for Mr. Allen in his book. At page 407 of Mr. Allen's monograph, Mr. Bryant says this:

> As I have before stated, the large surplus of full-grown males existing in 1869 nearly all disappeared in about 6 years, and when we consider the fact of their severe labours during the breeding season when they pass from 90 to 120 days without food, engaged in a constant struggle for their position and performing the most exhaustive functions of physical life, 6 or 7 years would seem to be the limit of the active period of their lives?

Well, Mr. President, interesting information upon some of these matters of a general kind, if the Tribunal care to discuss it, or my learned friends desire to discuss it will be found in the British Commissioners' supplemental Report and in the Appendix to the British Commissioners' supplemental Report. I am not now on any question of contested matter at all or any matter which could be supposed to be misrepresented by the British Commissioners.

On such questions as deer and very analagous cases, if you care to examine the books experience will tell you that it is believed from two to three years is the limit of the really virile powers of the stag; and I want to call attention to the hypothesis upon which the United States proceed, that every bull left is supposed to be fully competent, that every bull left is supposed to retain its powers as long as it is alive, for a period of 12 years, and that, as I have said, you are justified in reducing the stock of virile bulls of 13,600 down to 1,980. Now nobody who has ever studied this matter can be ignorant of what is the consequence of natural selection. You are aware what happens by artificial selection in stock-breeding, and in utilization of male power for the purpose of improving the breed. The best bull is selected, or the best stallion,

or the best dog, or the best boar, or the best ram, and for two or three or four years, and sometimes for more under certain circumstances, they exercise their functions; but you have here no means at all of selecting the best bulls—not the slightest. The only method of selection known is that they fight for the possession of the females. Under the circumstances what is called natural selection goes on. Now I might expand this subject, without wasting time, to considerable length, but I will, at any rate, be moderate in that regard, and will only state that which I know will commend itself to the Tribunal. The extract to which I will call attention is Darwin's "Origin of Species", at page 69, from the 6th edition published in 1886, and, in order that my learned friends may not be misled, I will tell them at once it is not in our Appendix. It is under the head of "Sexual Selection":

Inasmuch as peculiarities often appear under domestication in one sex and become hereditarily attached to that sex, so no doubt it will be under Nature. Thus it is rendered possible for the two sexes to be modified through natural selection in relation to different habits of life as is sometimes the case, or for one sex to be modified in relation to the other sex, as commonly occurs. This leads me to say a few words on what I have called "Sexual Selection". This form of selection depends not on a struggle for existence in relation to other organic beings, or to external conditions, but on a struggle between the individuals of one sex, generally the males for the possession of the other sex. The result is not death.

I pause to note, in that very interesting passage,—a very graphic passage from the affidavit of Mr. Stanley Brown where he has told you for the first time with his one year's experience that the males in an ordinary herd have nothing to do with the selection of females, but that it is the female who selects her male,—showing, with great deference to Mr. Stanley Brown, how little he really studied the matter,—it is absolutely unique as far as seal-life is concerned and certainly with regard to other animals.

The result is not death to the unsuccessful competitor, but few or no offspring. Sexual selection is, therefore, less rigorous than natural selection. Generally the most vigourous males, those which are best fitted for their places in Nature, will leave most progeny; but, in many cases, victory depends not so much on general vigor as on having special weapons confined to the male sex. A hornless stag or a spurless cock would have a poor chance of leaving numerous offspring. Sexual selection by always allowing the victor to breed might surely give indomitable courage length to the spur and strength to the wing to strike in a spurred leg in nearly the same manner as does the brutal cock fighter by the careful selection of his best cocks. How low in the scale of nature the law of battle descends, I know not. Male alligators have been described as fighting, bellowing and whirling round like Indians in a Wardance for the possession of the females; male salmon have been observed fighting all day long; male stag-beetles sometimes bear wounds from the huge mandibles of other males; the males of certain *hymenopterous* insects have been frequently seen by that inimitable observer, Mons. Fabre, fighting for a particular female who sits by, an apparently unconcerned beholder of the struggle, and then retires with the conqueror. The war is perhaps severest between the males of polygamous animals, and these seem oftenest provided with special weapons. The males of carnivorous animals are already well armed, though to them and to others special means of defence may be given through means of sexual selection; as the mane to the lion, and the hooked jaw to the male salmon; for the shield may be as important for victory as the sword or spear.

When I show you, as I shall upon the evidence in this case, that practically the evidence of the Treasury Agents, the evidence of the people who had no motive whatever except to tell the truth, is that by the years 1889 and 1890 fighting for the females had disappeared upon these Rookeries, it will be some support of the view that I am presenting that there is strong reason to believe that the potent cause which the United States Commissioners themselves recognized as being one of the causes that might lead to the diminution in seal life was playing its part in depopulating the Rookeries to which these seals resorted.

Now, I will, in the first place, as fairly as I can, and as chronologically as I can, tell you what the evidence shows. First, let me refer to the figures of the Russian killing. During the Russian time, which will be found at pages 132 and 133 of the British Commissioners' Report, section 771,—you will remember that General Foster interposed the other day to say that they disputed all these figures or some of them,—I really do not think, after the fullest examination that I can make out what on earth is meant by that, because the source of every one of these figures is given. It is taken in the most important period namely from 1838 to 1860, that is to say, a period of 22 years, from the correspondence printed at Washington in the year 1890. And all I say is this, that no other figures have been suggested. The Tribunal are not to act on surmise or on the observations of an Agent, however distinguished. The authority for these figures is given in paragraphs 772 to 781. They were referred to by Lord Hannen, I think, when the observation was made the other day; and I merely mention that, as far as I know, no other alternative figures have ever been suggested for the Russian period; and it is the fact that they show, as was mentioned by the Attorney-General, an average of less than 40,000. I may mention that in the documents annexed to the President's Message, I read from Executive Document 450 of the 51st Congress, and page 31 will be found, quoting from Mr. McIntyre the special Agent of the Treasury Department, again giving the reference to another Executive Document, these figures set out, without any suggestion that they are inaccurate or not trustworthy. Criticise the figures by all means; let any deduction be drawn from them that can fairly be drawn, and then say if this is fair or not.

Lord HANNEN.—Do I understand you to say that that is this very Table?

Sir RICHARD WEBSTER.—Yes, my Lord. My learned friend, Mr. Phelps, has it now before him. I do not know how many years it comprises. Perhaps my learned friend, Mr. Phelps, will be good enough to give it?

Mr. PHELPS.—The earliest year is 1817, and the latest 1860.

Sir RICHARD WEBSTER.—Yes. I merely mention it from the point of view of authentic documents. It is possible on some such idea as this, that this was not accurate that some of the suggestions have been made about the British Commissioners. The authority is given in every single case.

Now, what happened afterwards? I wish to treat it chronologically; though perhaps I could make my argument a little more graphic by not doing so, but I prefer to treat it chronologically; and I ask the Tribunal to turn to paragraph 809 of the British Commissioners' Report. From paragraph 809 to paragraph 833 are set out extracts from the United States documents, almost without exception; or, if not without exception, the authority is given. I have, either myself or by those who have assisted me, verified the whole of these documents; and I can say (though it must not be taken from my personal knowledge; therefore, I can only say as far as I know and as far as my information has led me) that these extracts are perfectly accurate.

Let me take them chronologically, and see if it is true that upon the information before the United States up to 1884 the first time that there was any doubt as to whether the sufficiency of the number of seals or seal herd was being kept up was subsequent to that date. The other extracts are important; and I will ask the Tribunal at some

time or other to look them through; but I think I might pass to the year 1874, because it is early enough. There is an important extract in 1873, to which attention should be called:

813. 1873. It was now found that the 3-year-old seals afforded the best marketable skins, and the killing was directed to those. The "reserves" became reduced to half their former number, and each beachmaster had on the average fifteen females. When the rookeries broke up at the close of the breeding season, the females lingered instead of leaving them as before. In September and October a few young were born, showing that some females had not been served at the proper time in 1872. The females were still increasing 5 per cent. annually in number.

Then paragraph 815 is:

In 1874, Lieutenant W. Maynard, U. S. N., investigated the conditions of seal life on the Pribilof Islands as Special Government Agent. He recommended that enlarged copies of maps of the breeding grounds should be furnished to the agents in charge of the islands, who should be required to compare these each year with the respective breeding rookeries. "This, if carefully done, will afford *data*, after a time, by which the fisheries can be regulated with comparative certainty." Respecting the number of seals killed, he says: "Since 1870 there have been killed on both islands, in round numbers, 112,000 young male seals each year. Whether this slaughter has prevented the seals from increasing in number or not, and, if so, to what extent, can only be deduced from their past history, which, unfortunately, is imperfectly known." He is inclined to think that no decrease had occurred between 1872 and 1874, but states that the period was too short to decide whether the killing was excessive. He adds: "The number now killed annually is entirely experimental, and we have nothing to start from as a basis." Maynard further states that the number of bulls in this year was not more than one-tenth that of the females.

Then page 138, paragraph 816.

816. The killing was this year confined to seals less than 5 years old, and more 2-year-olds were taken than in any year since 1870. This left a large number of males to mature. Many young were, however, born as late as August. In his official Report for this year Bryant protests.

I told you I think that Bryant who made affidavits on these matters left the Islands in 1877.

Bryant protests against the killing of pups for food, characterizing it as "a great waste," and adding, "I can find no precedent for this previous to the transfer of the island to the United States, only that the former Russian Fur Company allowed, as an extra indulgence to the natives, after the close of the season's sealing, to take 500 of these young seals for feasting.

You know probably Mr. President that the killing of pups continued right away till 1890 that is to say in addition to the 100,000 taken for commercial purposes I think the number was in 20 years 93,000 pups were taken for killing but this though called to their attention as a great amount, at the rate of about 4,000 or 5,000 a year, was allowed to continue till 1890.

Senator MORGAN.—Was it stopped after 1890.

Sir RICHARD WEBSTER.—Not till 1890 but after that it was stopped.

Now in page 138 the end of paragraph 816.

Bryant also states in the same Report that a residence of seven successive seasons on the islands had convinced him that the killing of 100,000 annually did not leave a sufficient number of males to mature for the wants of the increase in the number of females. He explains his reasons for this in some detail.

Now, Mr. President, it may be right or it may be wrong—that we will consider presently when I go through the whole of the evidence—but at any rate I show you this is no imagination of those who have looked into this matter impartially. That as early as 1875 it was pointed out that from 7 years experience the 100,000 killed did not leave a sufficient number of males to mature.

In 1876 the second paragraph of page 817.

Bryant again states that he believes the number 100,000 fixed for killing to have been too high, and that in his report he had recommended that it be reduced by 15,000.

Then in 1881:—

Lord HANNEN.—You are passing over Miller.

Sir RICHARD WEBSTER:

Our agents report a very considerable increase in the number of females since 1871. We cannot tell that there is much increase in the number of males.

That is Mr. Miller who was President of the Board of Directors of the Alaskan Commercial Company.

Then 822.

Mr. CARTER.—Do not you read 818?

Sir RICHARD WEBSTER.—I will read any one my learned friend wishes, but of course, I am not reading them consecutively.

Mr. CARTER.—No, I observe you are not.

Sir RICHARD WEBSTER.—Of course we cannot. I am making my argument and my learned friend will read of course anything that will support his view when it comes to his turn. I am obliged to my learned friend, however, for calling attention to this.

818. 1877. Bryant states that this year there was an evident increase in the number of breeding males. He estimates that there were about 1,800,000 breeding seals on the islands, as against 1,130,000 in 1869.

Then I ought to mention this that at paragraph 821 is a citation made from his report that I shall read later on.

Colonel Murray, one of the Government Agents, dates the beginning of a steady decrease of seals from this year.

that is from the year 1880.

Then paragraph 822:

822. 1881. Elliott, in his report printed in this year, strongly protests against the unnecessary slaughter of pups for food purposes. He states in the same report that the breeding rookeries have been gradually increasing since 1857.

W. B. Taylor, Assistant Agent of Treasury Department on St. Paul in 1881, says that according to information received from those who had been a number of years on the Island of St. George, there were as many seals there as ever.

823. 1882. Dr. H. H. McIntyre, after June 1870 Superintendent of the Seal Fisheries of Alaska for the lessees, states that since 1870 the number of seals on the Pribilof Islands had increased every year. Speaking in 1888 (see under, 1888), he, however, places the beginning of decrease in this year. The same gentleman reports that at this time the desired number of large skins could no longer be obtained.

Then page 139 there are several reports of a glowing character from Mr. Moulton and Mr. Gliddon, and I think there is one in 1886, paragraph 827.

827. 1886. George R. Tingle, Treasury Agent on the Pribilof Islands, states that a frequent inspection of the rookeries on the islands showed a decided increase in the number of cows, with an ample supply of bulls.

I call attention to this in connection with a case of what was supposed to be the common observation after 1884.

Then paragraph 830:

1888. Dr. H. H. McIntyre, Superintendent for Alaska Commmercial Company at the time on the islands, states that the number of seals has decreased since 1882; that the rookeries do not produce enough to bear the killing of "100,000 by marauders in addition to the 100,000 killed lawfully". He recommends that the permission accorded to natives of killing seal pups for food should be rescinded, and, speaking particularly of 1888, says: "There are at present, in my opinion, too few bull seals to keep the rookeries up to their best condition."

That is in the year 1888.

Mr. President, may I pause for a moment to remind the Tribunal that a bull-seal to be any good at all upon the rookeries, must be over seven years old. According to the best information, the best bull seals are about 9 or 10 years old; therefore, adding on one year for the birth, this must date you back to find something that has occurred to diminish male seal life as far back as 1880 or 1881; and I will point that observation presently when I come to the suggestion that pelagic sealing can have been the cause.

Then in the year 1890, at paragraph 832, the British Commissioners say:

Colonel J. Murray, First Assistant Government Agent, reports that the seals on the Pribilof Islands have been steadily decreasing since 1880, and attributes this to the excessive slaughter of males 2 to 5 years old.

Would you go back, Mr. President, if you please, to the year 1882. I did not read the last part of paragraph 823. This is what I had in my mind.

The same gentleman.—

that is Mr. McIntyre—

reports that at this time—

that is the year 1882—

the desired number of large skins could no longer be obtained.

Showing, as I shall show later on, that they were talking of killing seals of too small a size as early as the year 1882 to make up the number of 100,000. I suppose this is the evidence that the British Commissioners ought not to have included in their Report on the view of their duties suggested by my friends.

Now, Sir, I have read the documents—(in the great majority of cases, I believe in every case, the original document is here; they are at my friends disposal)—and I have read them as shortly as I could—I have read them in chronological order—and what does it point to? It points to the circumstance that in 1878, 1880, 1882 and at later years, the fact that too many seals were being killed was being brought to the attention of the United States authorities. My friends are entitled to the benefit of the fact that other people, possibly from motives in connection with the Company were not telling the truth—that is to say that there were *couleur de rose* reports in the year 1885, and in the year 1886, from Mr. Tingle and from Mr. Moulton. But we are now considering what the real fact is, and the fact to which I am addressing your attention, fact, is that during this time, if these Reports are true, too many seals were being killed—and there was too little virile life upon the rookeries in order to keep up the race of seals, attention was being called to it by persons of position and persons whose reputation ought to have attracted more attention than it did at the time the Reports were made. If you will look at page 139—I missed out the end of Paragraph 830, you will see this—that in the year 1888.

The standard weight of skins was lowered from 6 lbs to 5 lbs and to 4 1/2 lbs., because of scarcity of 6 lb skins. Thus, all males from 2 to 5 years old became, and thereafter continued to be, accounted killable.

Now, Mr. President, that is how the matter stands with regard to what I may call the concurrent Reports which were being made from time to time by Treasury Agents, and by independent people, many of whom are still living. Nobody can suggest that these agents had any motive for making reports of this kind. Their interest was the

other way and the United States do not in any way suggest their Reports were not true—because they could not suggest that—they do not in any way lead any one to the belief that they were under a mistake and had formed a wrong impression.

Now would the Tribunal (before I go to the most important time, that is 1888 and 1889) kindly turn to a diagram on page 257 of the British Counter Case, which so far as I know hitherto has not been either adversely criticised; and when the materials from which it is made up are examined, I do not think my friends will be able to impeach what it shows. This Diagram shows graphically the proportion of small skins that formed part of the catch. If I may tell you, Mr. President, anybody fond of mathematics, (and I dare say all the the members of the Tribunal are), and accustomed to statistics, can make this Diagram for themselves from the original Table of the Total Sales by the Alaska Company, which is printed in the Appendix of the British Counter Case Vol II page 255. This is merely a graphic pictorial illustration similar to that shewn by the United States Commissioners upon another matter. The years are given—1873 to 1892. Along the top-line, the percentages of small and large sized skins is shewn by the *green* color as compared with the *red* color. It would be convenient, I think, if you were told at once what are "Large", and what are "Small". *Large* sized skins comprise "Whigs", "Large Middlings", "Middlings", "Middlings and Smalls", "Smalls", and "Large pups", *Small* sized skins comprise, "Middling Pups", "Small Pups", "Extra Small Pups", "Extra Extra Small pups", "Grey Pups", and "Black pups".

Now I do not want it to be thought that you are to attach too much importance to those particular designations. I am not going to use this against my friends at all unfairly because these are Trade names in the London Market.

Lord HANNEN.—They convey no idea to my mind.

Sir RICHARD WEBSTER.—They convey no idea to anybody's mind as far as the pups are concerned but the importance of it is this—that every skin above 8 lb, in weight is treated as a large skin, and every skin below is treated as a small skin. Now if you would kindly look, I give the Reference at page 46 of the 10th census Report of Elliott.

Lord HANNEN.—Would you give those numbers again; they seem to contradict each other.

Sir RICHARD WEBSTER.—Every skin, my Lord, which is above 8lb is called a *large* skin.

Lord HANNEN.—There seems to be a contradiction.

Sir RICHARD WEBSTER.—The contradiction was in the way I put it. It had better perhaps, my Lord, appear on the Record in the shape of a Table: The various sizes of the North-west Coast Skins correspond to weight as follows:

	lbs. oz.
Large wigs	34.0
Small wigs	23.0
Middlings	14.6
Middlings and smalls	11.3
Smalls	9.8
Large pups	8.2
Middling pups	6.12
Small pups	5.10
Extra small pups	4.11
Extra-extra small pups	3.13
Grey pups	3.0

All that is contained on the Table which is in the Appendix: It would have been convenient, perhaps, if those weights had been put against those names, I regret it was not done, but one cannot always

foresee every point. Now on reference to the information that we have from Elliott's 10th Census Report of 1876—the one published in 1881—from weights ascertained by weighing a large number of seal skins, the skin of a seal of 4 years old weighs 12lbs; and the skin of a seal of 3 years old weighs 7lbs. I merely mention that to show there had been a largely increasing proportion of comparatively speaking young males being killed—the Reports show it, and the sales show it. We know in the year 1882 the standard was lowered in consequence of the difficulty of getting the full size of skins, and accordingly you will find, that the percentage of small skins runs up from below 50 per cent in the year 1873, to as high as nearly 80 per cent of male skins in the year 1889, with a temporary downfall (as not unfrequently happens), in the year 1885, when it fell down to something like the normal condition of matters. Therefore from that point of view it cannot ultimately be disputed by my friends successfully in this case, that during this period of years they were killing many more of the small skins than they ought to have killed. But will the Tribunal kindly appreciate this for a moment? The immediate result of pelagic sealing, if that was the cause, would be to decrease the number of *small* skins—not the number of *large* skins. I have pointed out to the Tribunal that the breeding bull of course must be more than seven years old. The killable skins which were supposed originally to be taken were four or five years old—that is to say, the bigger skins. The immediate result of pelagic sealing would have been that when it became prevalent you would have had, in a given number of seals—1,000 or 10,000—a larger proportion of bigger seals to the younger seals. When you got to a long series of years that would correct itself and you might get back to the old proportion. I do not think, if it had been true that pelagic sealing was the main cause in the first instance, but that it can be denied that you would have expected to find an increase in the proportion of big skins instead of an increase in the percentage of little skins. I mention that as a broad general commentary before I pass to what I may call more detailed matter in connection with it.

Now may I call attention to Reports upon this matter to which I submit (it is entirely for the Tribunal), the greatest attention must be paid. I can give them all in a very convenient reference on page 244 of the British Counter Case. You will find, Sir, the references given, in every instance, in the margin. The original Reports are set out in full in the Appendix to the British Case volume III, part 2, running over a number of pages. I only refer to the British Counter Case now in order that you may have them in compendious shape, and because I think, as far as I know, all the important extracts, or most of the important extracts are set out here. I read from page 244:

In 1890, Assistant Agent A. W. Lavender.

Now this is an Agent still employed by the United States engaged in assisting in getting up Affidavits for this case to a large extent, and there are two affidavits from him not contradicting this in any way:

In 1890, Assistant Agent A. W. Lavender writes:

The writer was surprised when he first visited the rookeries to find *no young bull seals upon* them; this looked strange to him, and he began to look up the cause, and it occurred to him that, from the constant driving of young male seals and the killing of all the 2,-3,-4 and 5 year-olds, *there were no young bulls left to go on the rookeries,* and without young blood the fur-seal industry will be something of the past in a very few years.

Now that is in the year 1890. Mr. President, I ask the Tribunal to remember this: That in that year there was made a detailed report (to

which I am coming presently), at the preparation of which, or, rather, at the notes for the preparation for which this gentleman, Mr. Lavender was present upon the island. If there had been any mistake about this matter—if it had been suggested that that Report was not accurate, there would have been strong ground for calling Mr. Lavender as a witness to prove the contrary. You know that Report was never forth coming until ordered by this Tribunal; but I call your attention to this—that in 1890 an independent Agent of the United States states that he found no young bull-seals there, and he attributes it to the killing of two, three, four and five-year-olds. Why, Sir, what as I have reminded you, is the necessary age for these bulls? The necessary age for these bulls is that they shall be seven, eight, nine, ten years old. Nobody can suggest that to the pelagic sealer is due the killing of bulls or male seals of an age say of four or five years. On the contrary, if that had been the charge against the pelagic sealer, my learned friends would have had no ground for their main complaint; and yet we find in 1890 the United States Agent is reporting that he finds no young bulls left upon the rookeries.

Now I will pass, if you will permit me to do so, Sir, all references there to Mr. Elliott's 1890 Report, because I prefer to take that by itself. I desire to show that independently of Mr. Elliott's Report, there was a body of testimony upon this matter which ought to have shown the United States authorities what the real truth was with regard to this matter; and that this allegation that pelagic sealing had depleted the sealeries could not, if fairly examined and tested by the real facts, have been seriously put forward. If that were the real case, after this evidence, I shall submit to this Tribunal that nobody really could come to such a conclusion.

Now in 1889 Mr. Goff reported also as Treasury Agent I must give you, Mr. President, a different reference for that. It is on page 245—you need not turn to it—but the actual Report, produced by Mr. Foster for us,—one Report—is to be found at page 85 of the 1st volume of the Appendix to the British Counter Case, but I read from page 245.

Now on page 247 of the British Counter Case appears the Report of Mr. Bryant who left in 1877. He says:

"The whole time I was there"—that is up to 1877:

> The whole time I was there there was an ample supply of full-grown vigorous males sufficient for serving all the females on the islands, and every year a surplus of vigorous bulls could always be found upon the rookeries awaiting an opportunity to usurp the place of some old or wounded bull, unable longer to maintain his place upon the breeding-grounds. I should except from this general statement the seasons of 1873 and to 1875, when the destruction of young males in 1868, and the error made by the Company under their misapprehension as to the character of the skins to be taken for market, perceptibly affected the males on the breeding-grounds. It is not certain that the fertilizing of the females was thereby affected, and this gap was filled up, and from this time on there was at all times not only a sufficiency but a surplus of male life for breeding purposes.

That is up to the year 1877. Perhaps, Mr. President, you will be good enough to make a note in your own mind while upon the page, that Bryant's Report was speaking of 1877 when he left the island and never returned to it again.

Now that statement is taken from Bryant's Affidavit at page 7 of Volume II of the United States Case. Here was his Report which is an official Report of 1875, quoted at page 247 of the British Counter Case.

> At time of writing my detailed Report on the habits of these animals, dated the 30th November, 1869, it was stated to be 100,000. This number was based on the best information obtainable at that time from the natives of the island and the few employés of the former Russian Fur Company remaining in the territory. Since

then a residence of seven successive seasons on the island, in charge of these animals, has furnished me with the desired opportunity for determining this surplus product by actual study of their habits and requirements, and the result is, *the killing of 100,000 per annum does not leave a sufficient number of males to mature for the wants of the increase in the number of females.* And as it is desirable to state some of the methods by which these conclusions have been reached by me, a brief statement of the habits of these animals and the effect of the killing of 100,000 per year for the past five years seems necessary.

These hauling-grounds are swept and driven two or three times a week during the months of June and July, and the prime seals culled out for killing, and every seal growing up has to run this gauntlet for his life his second, third, and fourth year before he escapes to grow up as a breeding bull. Thus it will be seen the method of killing does not admit of the setting apart of a special number and taking the remainder for the quota for market, and the only possible way to preserve the requisite number for breeding purposes is to restrict the number to be killed so far within the product as to ensure enough escaping for this object.

I will show you, Mr. President, if I may make the observation here, that after about the year 1885 or 1886 the difficulty was so great in getting large skins—not small pups, but large skins,—that they killed in the drives every seal that was big enough to kill. There was no letting go of the five or six year olds in order that they might become breeding bulls. They were all killed.

When the lease was put in practical operation in 1871 there was a very large excess of breeding males on hand; since then the surplus has been diminished by the dying out of the old seals faster than there has been younger seals allowed to escape and grow up to fill their places, until the present stock is insufficient to meet the necessities of the increasing number of breeding females.

Then occurs a passage on page 248, lower down, to which I direct the attention of the court. I do not pause to read it, as it is under their eye; but it supports the opinion Mr. Bryant then gave.

In the year 1876 Mr. Bryant was examined by a Committee of Congress, and his answer is given on page 248.

Q. Your opinion then is that the number of 100,000 on the two islands authorized by law can be regularly taken without diminishing the crop or number of seals coming to the islands? A. I do not feel quite sure of that, as will be seen in my detailed report to the Secretary of the Treasury included in the evidence which has been laid before the Committee. There were indications of diminution in the number of male seals.

Then he refers to what happened in 1868.

Mr. FOSTER.—That is the reason.

Sir RICHARD WEBSTER.—The United States say that we have not referred to the whole of the evidence of Mr. Bryant. As a matter of fact, there is nothing left out from Mr. Bryant's evidence before that commission that tells in any way against us. On the contrary if the report to the House of Representatives of the 44th Cong., numbered 623, page 99, be referred to, it will be found that the further evidence that he gives is in our favor, with regard to the matter that they had been killing seals, that they were not allowing a sufficient number of big seals to be left to become bulls.

At page 249 of the Counter Case, Mr. Taylor, Assistant Treasury Agent in 1881, is quoted. The reference is given, and my friends can follow it. I need not give it. He says:

I believe the capacity of the bull seal is limited the same as any other animal; and I have very frequently counted from 30 to 35, and even at one time 42 cows to one bull. I think if there were more bulls there would be less cows to one bull, and in that way the increase would be greater than now.

Then Mr. McIntyre, in 1882:

I was therefore always alert to see that the due proportion of breeding males of serviceable age was allowed to return to the rookeries. This was a comparatively easy task prior to 1882 but became from year to year more difficult as the seals decreased.

Now, I ask what is the fair conclusion to be drawn from this, that after 1882 not that the pups diminished—it may be perfectly true that they were killing too many for other reasons—but that the breeding bulls could with difficulty be obtained from year to year. They could not get the breeding bulls, and those are the bulls that ought to be supplied out of the larger seals they killed in the drives.

Mr. Ryan, in 1885 and 1886, also a Treasury Agent:

As the Report will show, we killed but few bulls, though the Company was authorized to knock down all old troublesome bulls coming in their way to the number of thirty, the skins of which were wanted by the natives for door mats. The surplus of old bulls expected to be found did not make their appearance in the drives or on the rookeries this season, and I think now nor last season either.

Mr. President, this is a time when all the persons who have considered this matter, my learned friends included, are speaking of, a date when pelagic sealing could have had no effect on the bulls. This is referring to the years 1885 and 1886. The suggestion they make is that the very earliest year when pelagic sealing would have had any sensible effect would have been 1884. Even that is earlier than it could have had any effect, but taking their own case, pelagic sealing could not have had any effect upon bulls not being there to serve the rookeries in 1885 or 1886; and every one who is accustomed to deal with evidence will recognize the force of what I say.

Next is Mr. Palmer, who gives the result of his observations in 1890, the same year that Mr. Elliott was there:

It will be seen also that by this driving process the two or three year olds, which are the only ones killed for their skins, are culled out almost completely from the seals which visit these islands, and therefore that very few male seals ever reach a greater age; consequently there are not enough young bulls growing up to supply even the yearly loss on the rookeries, much less to provide for any increase.

The United States shut their eyes to every one of these facts. We know that there was great pressure being exerted. I quote from memory from one of the affidavits: "We were being pressed to get larger skins, because the buyers complained that the larger sizes were running down." I remember that extract. I will verify my recollection before I close my observations.

In the report of the Congressional Committee of the fur-seals of Alaska, report 3883 to the House of Representatives, Mr. McIntyre, a witness vouched over and over again by my learned friends as a witness of responsibility, gave this evidence, page 118:

Q. I want to know what the regulation has been or how the Company manages in regard to taking the kind of skins demanded by the foreign market? A. We always receive instructions from London as to what the market demands. There is very little variation from year to year. At first, and until 1873, the agents of the Company were not fully informed as to what the market required, and the skins sent forward were too small; but from 1873 to 1882 we were able to get exactly the sizes required, and very little fault was found by the London people. We had then, and at all times until the marauding was actively engaged in, a large surplus of animals from which to make our selection. After 1883 the sizes decreased, and have constantly decreased ever since. Last year they sent an urgent appeal to take larger skins, as the sizes were running down; but we were unable to respond, and during the present season the catch averages still smaller in size, as we were obliged to turn back for rookery service any bulls of desirable size for killing, and had very few surplus of any marketable size from which to select.

That was in the year 1888, speaking of the year 1887. Now what is happening? The sizes are running down. They are obliged to kill all they can in order to get their 100,000, and still the sizes run down, after what year? After the year 1883. In fairness, upon this issue, what answer can be given to the suggestion? Nobody pretends that at any

time pelagic sealing could make the sizes run down. The sizes running down means that smaller seals are being killed upon the land; and that diagram of the very large proportion of small seals which were being sold in the years 1883 up to 1889 is proof of what actually was occurring with regard to these very seals when the skins were taken. The consequence is that it was not that there were less young seals, but there was a much larger proportion of the young seals to the old ones. The old seals were being killed, and that was the stock from which the bulls were to be drawn.

Mr. President, kindly remember that this case I am now making is independent of any suggestion or anything based upon Mr. Elliott's report, although I will show this Tribunal that the suggestion that Mr. Elliott's report is to be regarded with suspicion or disfavor is an unworthy suggestion, and never ought to have been made even hypothetically by any one appearing for the United States.

Then on page 250 Dr. Dall in 1891—I do not know whether that is the same Dr. Dall that makes the affidavit for the United States, but I believe it is:

> Dr. Dall attributes the present decline of the fur-seals chiefly to the excessive killing of young males; there is not now a sufficient number of males; in the breeding grounds to maintain the species. He admits that the method of driving referred to by Mr. Palmer is also very destructive. The excessive destruction of males began in 1872 and it has continued to the present time.

And in a letter written on the 5th of November, 1891, he says further:

> What I did say was to intimate that after the killing in the open sea (the most important fact in the diminution) the second factor was the killing of too many young males rather than the injuries caused by driving; the latter being a view much insisted on by Mr. Palmer.

I will call attention later on, I am afraid I must, say this afternoon, to the condition of driving; and my learned friends will have also to bear the brunt of that when they come to deal with this question of increase. It is in my favor that these gentlemen are opponents of pelagic sealing. It is in my favor that these are the men who wished pelagic sealing to be suppressed. From the fact that they did wish pelagic sealing to be suppressed all the more important is their testimony with regard to the other potent cause at work; and this is a cause admitted by the United States Commissioners to be one of the causes which would directly affect the life and the numbers of the seals upon the islands.

Now, Mr. President, there is a very important piece of evidence in this matter from Mr. McIntyre's affidavit on behalf of the United States, at page 293 of the collated testimony:

> The policy of the Alaska Commercial Company during the whole period of its lease was, as might be naturally expected, to obtain the best possible skins for market, and at the same time preserve the rookeries against injury; for it was not only in their interest to be able to secure from year to year until the expiration of the lease the full quota allowed by law, but they confidently expected by reason of their good management of the business and the faithful fulfillment of every obligation to the Government to obtain the franchise for a second term. I was therefore, alert to see that the due proportion of breeding males of serviceable age was allowed to return to the rookeries. This was a comparatively easy task prior to 1882, but became from year to year more difficult, as the seals decreased. No very explicit orders were given to the "bosses" upon this point until 1888, because the bulls seemed to be plentiful enough, and because it was easier to kill and skin a small seal than a large one, and the natives were inclined for this reason to allow the larger ones to escape; but in 1888 and 1889 there was such a marked scarcity of breeding males on the rookeries that I gave strict orders to spare all five year old bulls and confine the killing to smaller animals.

It will pass the ability of my learned friend Mr. Phelps to suggest upon any evidence in this case that before 1882 pelagic sealing had the slightest effect or could have had the slightest effect upon these bulls; and yet there is the statement of the man who is vouched over and over again as being a witness of accuracy. He says that after 1882 it became from year to year more and more difficult to get, what? The bulls. And in 1888 and 1889 every bull above five years old was spared. Why, Mr. President the very affidavit proves my case. Take five years off 1888, and where do you come back to? 1883. The bull which is five years old in 1888 must have been conceived in the year 1882; and nobody suggests, even in the oral, still less in the written, argument, that up to the year 1882 pelagic sealing had had any effect which could depreciate the number of breeding bulls at any time. Certainly at that time no suggestion of the kind is made.

Mr. CARTER.—That suggestion has been made and will be repeated.

Sir RICHARD WEBSTER.—Mr. Carter says it, Mr. President, and of course he is perfectly entitled to say it, though it is not germane to what I was saying. But when the suggestion is repeated, we shall be entitled to have the place where it has been originally made pointed out. It is not in the stress of argument, it is not in the pinch of the case, that counsel can make the suggestion. We can all make that. We can all say that we do not believe witnesses that are against us; we can all say we discredit people as to whose testimony the only objection is that it is adverse to our case. It is not to make a suggestion; it is to show upon what original document, where in the case, at any time prior to reply, such a suggestion has been made. On page 165 of the United States Case it is put in this way:

> From the year 1880 to the year 1884 and 1885, the condition of the rookeries showed neither increase or decrease in the number of seals. In 1884 however, there was a perceptible decrease noticed in the seal herd at the islands.

That is not a suggestion that the difficulty in getting breeding bulls was greater after 1882 because of pelagic sealing. But I must put a restraint upon my argument, whatever the allurements may be that are held out by my learned friend Mr. Carter.

Mr. President, in this connection let us approach at once—for I am arguing this case at present quite independently of anything upon which the slightest suspicion has been cast,—let us take the other limb of the United States Commissioners argument, that which they thought of sufficient importance to repeat it twice. It is true that the harems have diminished in size? They admit that the two causes would be diminution in the number of virile males, and if there are sufficient virile males, consequently smaller harems. Is it true that the harems have diminished in size to each virile bull. I remind you, Sir, that the Commissioners rely upon the statement made to them by Mr. Webster that whereas there used to be thirty now there were only fifteen. Mr. Webster's affidavit will be found at page 179 of the second volume of the Appendix, and there is not a reference to the size of the harems from beginning to end. I give you the page in order that I may be checked if I am wrong. The most important point, according to the United States Commissioners own statement, is left unsupported by proof. But let us see whether there is not some proof on the other side.

The PRESIDENT.—Was it not given as a literal extract?

Sir RICHARD WEBSTER.—Oh no; not at all. The affidavit had not been made at the time. Oh no, it is not that. They had had a conversation with Mr. Webster. If you will kindly look once more at page 349, you will find it thus:

It is worth while here to repeat the statement of the latter that formerly there would be on an average 30 cows to 1 bull; now they would not average 15.

This is considered so important, Mr. President, if I am not unduly troubling you will you look at page 344, you will find there they quote Captain Webster and they quote Mr. Redpath. Captain Webster is the only one who is supposed to have said anything with reference to the size of the harems. Mr. Redpath only speaks of the total number of females, which has nothing of course to do with the point upon which I am arguing, which is to contrast the condition of virile males, and the condition of females per virile males.

The PRESIDENT.—Where was this declaration made?

Sir RICHARD WEBSTER.—I should think on the island to the Commissioners in the year 1891, when they were there.

The PRESIDENT.—By word of mouth?

Sir RICHARD WEBSTER.—Yes. A statement made to them on a vital point by Mr. Webster. Mr. Webster makes subsequently his affidavit—the actual date is sometime in June 1892—and that affidavit does not refer to the size of the harems or in any way repeat the statement that has been made. I do not want it to be thought that I am going to rely upon negative testimony in this respect, if you will permit me to say so. I am only calling attention to that to show the absence of affirmative testimony on the part of the United States in regard to the matter.

But there is one observation, before you adjourn, Sir, which I must make. The Commissioners were there in 1891 themselves. If they thought as they have said, that it was of vital importance to ascertain this fact, whether harems had diminished in size per virile bull, they would have examined it. Either they did or did not examine it, they have not given us their results. If they did not examine it they have failed, as I contend in my submission to this Tribunal, to consider that question which they themselves by their report put down as being a test question, and which, at any rate, I have shown my willingness to meet upon the evidence.

The Tribunal here adjourned for a short time.

Sir RICHARD WEBSTER.—I had pointed out to the Tribunal that if the United States could have established a decrease in the number of cows per virile male it was vital to their case to do so. Now, how does the evidence stand? I will call the attention of the Tribunal first to paragraphs 292 to 294 of the British Commissioners' Report.

292. Though each full-grown male or "seacatch" holding his place on the rookery ground endeavours to obtain and keep about him as many females as possible, there is a limit to the number which may be advantageously held by a single male, and when adult males are found in abundance, it is not easy to pass this normal limit; but, on the other hand, when, in consequence of a paucity of adult males in proportion to females, the harems become too large, the females are irregularly served, served too late in the season, or, in some cases, may altogether escape efficient service, with resulting irregularities in times of birth of young in the next year, or an addition to the number of barren females.

293. The proper portion of adult males to females cannot be ascertained by inspection of the Pribylof rookeries as they are at present, because of the obvious and generally acknowledged deficiency of virile males; but in the earlier years of the control of these islands by the United States, Bryant estimated the existing proportion as about one male to fifteen females, or, as indicated by other statements by the same writer, as one to nine or twelve. Elliott, a few years later, and subsequent to the date of certain changes in organization of the seals described by Bryant, writes:—"I found it an exceedingly difficult matter to satisfy myself as to a fair general average number of cows to each bull on the rookery; but, after protracted study, I think it will be nearly correct when I assign to each male a general ratio of from fifteen to twenty females at the stations nearest the water, and from there back in order from

that line to the rear from five to twelve." M. Grebnitsky, Superintendent of the Commander Islands, as the result of his prolonged experience, states that the proportion of one adult male to ten females should not, as a rule, be overpassed, and that one to twenty may be considered as a maximum limit. Captain Blair, long familiar with the fur-seals of the Asiatic coast, informed us, in speaking of Robben Island, that the number of males now existing there, viz., one adult male to twenty-five females, was far too small. Lieutenant Maynard, again, says: "The bulls are polygamous, having from five to twenty cows each; so that the number of them upon the rookeries is not more than one-tenth of that of the cows."

294. It may thus be very safely assumed that the ratio of virile males of full age, cannot be allowed to exceed the proportion of one to twenty, without serious danger of harm to the breeding rookeries, and the certainty of grave irregularities on them; and it is necessary to bear this fact in mind in endeavouring to appreciate the meaning of the present condition of the rookeries of the Pribilof Islands, where, as elsewhere pointed out, these conditions have, for a number of years, not been realized.

It is not too far to say, Mr. President, the result of that collection of authorities would put an average of something like 1 to 10 with a maximum of 1 to 15, and in extreme cases 1 in 20 being thought too high. Now let me first take the United States evidence as to what the state of things is, or rather I should say, as to what the state of things ought to be; and if the Tribunal will kindly take the 2nd volume of the Appendix, they will find Mr. Bryant's affidavit at page 6 where, in the middle of the paragraph with a marginal note of "Bulls," he says: "Here he"—that is the bull—

gathers about him as many cows as he is able to place within the radius of the area controlled by him: the average seen at one time while I was on the islands was from fifteen to twenty to a bull; but as the cows were constantly going to and coming from the water, it is impossible to calculate accurately the number to a harem. Probably not all the cows belonging to a bull were on shore at any one time; and I am of the opinion that a bull could, if necessary, serve seventy-five to a hundred cows during a season.

I mention that, as Mr. Bryant's affidavit made in the year 1892 is somewhat a strong order after he had left the Island for some 16 years; but it is important, even with his desire to make an affidavit, as far as he could, justly in accordance with the United States Case, he puts the average from 15 to 20.

I would kindly ask you to be good enough to turn to page 14 of the same book where you will find Mr. Stanley Brown's first affidavit in the matter; and, reminding you of an average from 1 to 15, on a maximum of 20, let us look how Mr. Stanley Brown, with his one year's experience, describes it:

The number of females which a bull is able to gather around him to form his harem, depending, as it does in some measure, upon topographic conditions, may be represented by extremes of one and 75. The average number of last year was about 20 or 25. Unusually large harems were infrequent.

Now I wish to speak with all respect for Mr. Stanley Brown's opinion, but it is remarkable to note that referring to this subject with a fresh mind he puts the average at 20 to 25, or 30 or 40 per cent above the 4 or 5 gentlemen of great experience, whose evidence, from their published reports, I have already read to the Tribunal; and he mentions harems he had seen which ran up as high as 75.

Now there are two accounts made of this matter by Mr. Evermann in the United States Counter Case at page 264. The first one gives 13 bulls, 90 cows, and 211 pups; and he says that he counted, counting all the harems, calling one bull and all the cows and pups about him, one harem. The next one gives 15 bulls, 200 cows, and 600 pups, which is 1 in 40; and I desire to point out a very remarkable thing that in making the count of a harem he says.

A good many cows, and a great many pups were not counted, as they did not seem to belong to any particular family. These cows had been served, and were, consequently, allowed to wander from their lords. The pups apparently do not long remain in families where they belong, but soon begin to wander about, and to collect, for a part of the day at least, into large bunches or pods.

Therefore I point out that it is an estimate not taken in a way that would create the largest maximum number I make no complaint about it but it cannot be said he counted exceptionally large harems, because he himself describes before his count he left out some of the cows and pups that might apparently belong because he thought there were more than did belong to the harems. But in the evidence as it stands you have in the year 1891 and 1892 averages according to Mr. Stanley Brown of 25, and of Mr. Evermann an estimate given from these calculations which would show even a larger quantity.

Now there is very accurate testimony of this matter given by Mr. Macoun in page 140 of the first volume of the Appendix to the Counter Case, which I will ask you to be good enough to follow reminding you once more, if I may respectfully do so, of the importance of this issue, as pointed out by the United States Commissioners themselves:

Whenever harems were well defined, and could be readily separated from adjoining ones, the number of female seals was counted. It was found that though there were a few cases in which an old bull would have but two or three cows about him; there were many other bulls which had fifty or more one in particular shown me by Mr. Brown, had about him more than eighty females. This was Mr. Brown's estimate.

The average number of females in each harem, according to my count was about thirty, my figures giving a little over that number. My attention was frequently drawn by the United States Agents to what they called the great number of mature bulls that were without harems. Comparing mentally the number of such bulls with those seen on the rookeries of last year, I decided, while on the ground, that there were not more than there were in 1891 though an additional number of mature males must have come upon the breeding-grounds. A comparison of photographs taken during the two seasons show no change in the number of bulls without harems. During neither season were there old bulls to be seen in anything like the numbers mentioned by Elliott and others.

Thus, Mr. S. N. Buynitsky says:

Thousands of old bulls, which have become useless for the purposes of propagation and are an incumbrance to the rookeries might be killed for their blubber.

Captain Bryant writes:

During the latter portion of the landing time there is a large excess of old males that cannot find room on the breeding places; these pass up with the younger seals and congregate along the upper edge of the rookery, and watch for a chanee to charge down and fill any vacancies that may occur.

And again:

The number of full-grown males at this date (10th August) may be considered as three times greater than the number required, or equal to one full-grown male to every three or four females.

Elliott says, writing of the years 1872–74:

At the rear of all these rookeries there is invariably a large number of able-bodied males which have come late, but which wait patiently, yet in vain for families. All the surplus able-bodied males that have not been successful in effecting a landing on the rookeries cannot at any time during the season be seen here on this rear line. Only a portion of their number are in sight; the others are either loafing at sea adjacent, or are hauled-out in morose squads between the rookeries on the beaches.

And again:

300 or 400 old bulls were killed to supply skins to furnish the natives with canoes.

Not that number could have been secured in 1892 had the bulls without harems been driven from every rookery on both islands.

The greatest number of bulls in proportion to the cows on the rookeries were to be found at North-east Point. I visited the rookeries there in company with Mr. Brown on the 2nd July. He drew my attention to what he called the excessive number of bulls without harems and there certainly appeared to be a great many but knowing that their great size renders them conspicious, I carefully counted all that were to be seen in the vicinity of the rookeries at this place.

The bulls near each rookery were counted three times, and the totals of the three counts were 94, 89, and 92 respectively.

There may have been a few hidden behind rocks, but certainly not more than a dozen in all placing the total number at 100, and allowing twenty cows for each bull, there were enough bulls on this rookery to serve 2,000 cows more than there were.

I do not think anybody would suggest this is not fairly reported:

This is assuming that all were of an age and condition that fitted them for service. Many of them showed the grey wig which proved them to be not yet fully grown, while others were without doubt worn-out old bulls no longer fit for service. That the majority of them were in this condition is proved by the fact that though attempts of service by grey wigs were not infrequent I never saw one of these old bulls pay the slightest attention to any females that might pass near them.

Senator MORGAN.—Will you allow me to inquire as to your observation upon the testimony? Is it a correct description of a seal that is not full grown to call it a grey wig.

Sir RICHARD WEBSTER.—I believe so, yes.

At Zapadnie Rookery 3rd July, Mr. Brown, Mr. Townsend and I noticed on several occasions a cow escape from a harem and lie down at some distance behind it, but in only one instance was any notice paid them by bulls near by. In this one instance the cow endeavoured in many ways to attract an old bull's attention, rubbing her nose against him and striking him playfully with her flippers; he made some faint response, but after a minute or two lay down and went to sleep again. Two other bulls lying near them raised their heads once or twice to observe what was going on but no attempt was made to serve the female.

There were in 1892, in my opinion, more old bulls without cows in the vicinity of the rookeries at North-east Point than the combined number on all the other rookeries.

At Tolstoi rookery (3rd July) but one old bull without a harem could be detected at the south end of the breeding-ground, where a good view can be had of a great part of the rookery.

On St. George's Island there were, in proportion to the total number of seals even fewer bulls than on St. Paul Island. On the 15th July there were not a dozen along the whole extent of North rookery, and but two were seen at Little East rookery, and two at East rookery.

Zapadnie was visited the next day, and not a dozen were to be seen there so many statements have been published to the effect that old bulls without harems are always to be found in large numbers near breeding-grounds that it would seem that the rookeries on St. Paul Island are nearer their normal condition than those on St. George.

Now, I ask you only to assume that that Report by Mr. Macoun, which I have referred to many times before, is a fair statement of what he saw.

Now, let me call your attention to the year 1890, when there were no less than four Government Agents there, who have all made Reports, besides Mr. Elliott who was sent to make an independent and exhaustive Report. Will the Tribunal kindly take Mr. Elliott's Report, which was from actual observation as I shall show you from his diary, and look at page 80 first.

THE ARRIVAL OF THE BREEDING SEALS, 1872–1890.—In view of the changed condition of the rookeries of St. Paul and St. George last summer, I took great care in noting the daily arrival of the breeding-seals and methods contrasting these notes with those taken eighteen years earlier: I can truthfully assert that they come as they came in 1872, in the same time, same manner, and in every respect comport themselves as they did, save in two characteristics; the old bulls are disproportionately scant in number, exceedingly so, and the young male life fit to take their places, is virtually extinct. I reviewed in 1874 my studies of this topic in the following language:

And then he writes what I need not read at present, except to call attention to the fact that there was a general *ratio* between bulls cows of from 15 to 20 at the stations nearest the water, and at the back from 5 to 12. That is what I read to day.

Thus in 1872, when the rookeries were carefully observed with reference to this question, I found a general average of fifteen cows to each bull: (without taking into consideration the virgin females): in 1890, a general average of forty to fifty

cows to each old bull (no young ones about), as the result of careful investigation: and single harems in which I have counted over one hundred cows each in the flimsy charge of an old and weary "sea-catch"; such harems were not uncommon: this unnatural disproportion of the sexes on these breeding grounds to-day renders the service there of reproduction quite lifeless—almost impotent, wholly so in a vast aggregate of cases.

I cannot too often repeat as I have shown you already and will remind you later on there are no less than four Government Agents, who knew of these facts, and who have made Reports, showing that they observed the same thing; and there is not a shadow of a statement that this is untrue. The only grounds on which it can be said to be untrue or exaggerated is because it is not the class of testimony favourable to the United States' contention that the harems had decreased in number. Would you kindly turn to page 240? This is the extract made at the time on Ketavie, one of the rookeries:

As this is the time the cows begin to haul out in appreciable numbers, I took a careful view at this Ketavie Rookery to day from that point of sight in the sketch opposite.

You know that there were some 30 or 40 in number, which were photographed by the United States, and the photographs have been deposited with the Report before this tribunal.

I saw but three clusters of cows in all the sweep of this picture, and they in the fore-ground right between the 1st and 2nd rollers as they come in; these pods were bevies of from 30 to 50 cows each, all thickly clustered around a single bull with all the other bulls stretched in somnolence around them, just as I recorded the state of affairs on Tolstoi yesterday; and as I go over the field on Lukannon right after this I find it precisely that way there, too; this apathy of the bulls coupled with the total absence of the "polseecatchie" (or "half-bulls") on these breeding grounds at this hour is a striking contrast with that din and fury that was so marked among the swarming bulls of 1872 on this and every other one of the breeding grounds of the Pribilof Islands.

Then I might read page 241, the day before on Tolstoi, which he refers to—

But the behavior of the old bulls is extraordinary this morning at this time of the inflowing cows; they are listless; three-fourths of their scanty number, stretched out sound asleep, while right alongside of these sleepers, a pod of 15 or 30 cows will be closely clustered around a single alert bull, or one that at least is not inert and stupid. There are three such pods as that right under my eyes as I make this note, lying at the junction of the sand beach and rocks of Tolstoi rookery; no such scattering of bulls and indifference was ever witnessed on any of these breeding-grounds in 1872–'74; then every bull was alert and furious in his struggles to get possession of at least one, if not all the females within reach;—now, look at them! Why, it seems to me that these bulls are enfeebled and sick. At least it is a most remarkable deviation from the method and order of first arrival of the females in 1872; such a picture of perfect listlessness and indifference as this is, from the beginning to the end of the season, never met anybody's eye on these breeding-grounds then.

Now, nobody can read this Report and know that it was a contemporaneous record of that which he and many other persons saw at the same time, without coming to the conclusion at once, if it was possible of contradiction in fact, it would have been contradicted. I will show you it is without contradiction.

I cannot help pressing upon you the fact of four respectable Government Agents referring to this Report, knowing it is made and describing to the same extent though not in such detail the same things, all of whom must be supposed to be telling a falsehood if this is not a true story of what is going on. You cannot wonder that the United States people were not willing that such accurate information should be at our disposal.

Take page 245, on the 3rd of July. You will remember the principal hauling out begins on the 20th of June, and there are constant fights

when the first cows come in. I do not know if you have it in your minds, I read it yesterday, as soon as the cows begin to arrive the fights are worst of all,—in that time the most dire fights take place to get possession of these cows; that is, as the Islands used to be.

The hauling of the cows on Zapadnie to-day is extraordinary in contrast with its appearance here in 1872 at this time, and only a week from the hour of its utmost limit of expansion. Really, I cannot see much increase since my notes last week, but such rusty cows, such somnolent stupid bulls! such an abnormal average as 60 to 75 cows in the harems! while lots of sleeping bulls all around, though only some 40 or 50 feet away from these harems, where the bulls in charge are so feeble that they have refused the advances of eager cows repeatedly under my eyes within less than 20 minutes after I had set a fixed watch on half a dozen right within my view and near by.

Sir, I have picked those out. That is the same rookery to which one of the extracts from Mr. Macoun's Report applies. That is by no means an isolated specimen of what the gentleman saw, but may I with respect, Mr. President, kindly ask the attention of every member of this Tribunal to this fact: everybody, prior to these years, has described the fights between the bulls as occurring when these cows were coming—as scenes of perpetual fights—the bulls fighting to get their cows. Would you look at page 385 of the United States Counter Case, and let me read Mr. Stanley Brown's picture, perfectly fair I dare say, and you cannot have a better contrast. He says:

Any statement to the effect that the occasional occurrence of large harems indicates a decrease in the available number of virile males and hence deterioration of the rookeries, should be received with great caution, if not entirely ignored. The bulls play only a secondary part in the formation of harems.

Why, Sir, there is not a single man who has ever been on that island for four or five seasons who can possibly corroborate that statement.

It is known perfectly well; and expert after expert recording the life of these animals has, for a period of a quarter of a century, negatived this suggestion.

Senator MORGAN.—How could the sleepy lord of the seraglio compel the allegiance of these great numbers of cows?

Sir RICHARD WEBSTER.—They do not compel it.

Senator MORGAN.—Then what becomes of the question of selection?

Sir RICHARD WEBSTER.—If you will pardon my saying so, Senator, you are not following my proposition. The evidence is that they did not compel it in the year 1890–91,—the evidence is that they *used* to compel it.

Senator MORGAN.—I thought it was quite their practice.

Sir RICHARD WEBSTER.—It *was* their practice. *Now*, they are not in the condition to do it. The fact of animals—bulls and others—becoming incompetent for service is perfectly well known, though they are strong and quarrelsome. All that is perfectly well known. But what Mr. Stanley Brown is describing is the selection of harems by the *females*—not by the *bulls* at all.

Senator MORGAN.—I understood that the evidence and argument hitherto proceeded on the ground that these old seals compel the allegiance of the females.

Sir RICHARD WEBSTER.—That is exactly so. The whole evidence is that it was not so in 1890, 1891, 1892. Senator, I can only submit it to your judgment on the matter, and I only ask your criticism upon what I say. The evidence is universal and overwhelming that prior to the decrease of bulls on these rookeries, the formation of the harems was by the bulls. The fact spoken to by the United States witnesses is that in 1890, 1891 and 1892, the bulls did not exercise any promi-

nent part in the formation of the harems at all. Would you listen to this affidavit of Mr. Stanley Brown, the special gentleman sent to investigate and report on this matter.

He says:

It is the cow which takes the initiative. She is in the water beyond the reach or control of the male, and can select her own point of landing. Her manner on coming ashore is readily distinguished from that of the young males which continuously play along the sea margin of the breeding grounds. She comes out of the water, carefully noses or smells the rocks here or there like a dog, and then makes her way to the bull of her own selecting.

The evidence is that the bull drives her to it, and very often takes her in his mouth and makes her come and obey him, and chastises her if she does not lie down.

Mr. CARTER.—Where is that evidence?

Sir RICHARD WEBSTER.—I will give it you in a moment; it has been given in evidence over and over again.

Lord HANNEN.—When on shore? You seem, Sir Richard, to speak of it as though the female were out of the water.

Sir RICHARD WEBSTER.—I think there is actually evidence in some cases, that the bull even does that.

Now Mr. Stanley Brown says:

In this incipient stage of her career on shore there is but little interference on the part of the male, but once well away from the water and near the bull she has chosen, he approaches her, manifests his pleasure, and greetings are exchanged.

I will not overlook the point, my Lord—I believe instances are given in the Affidavits of the bull even taking the female as she comes to the edge of the water; but whether that be so or not, immediately on her coming out of the water, there is as I shall show presently, abundant evidence. But I am dealing now with this statement by way of contrast.

In this incipient stage of her career on shore there is but little interference on the part of the male, but once well away from the water and near the bull she has chosen, he approaches her, manifests his pleasure, and greetings are exchanged. She then joins the other cows and as soon as dry lies down and goes comfortably to sleep. I have seen this selective power exercised repeatedly and the result is that one bull will be especially favored, while those within fifteen or twenty feet will be ignored.

Senator MORGAN.—That brings out the point that I had in my mind: It seemed to me that an excess of bulls upon the rookeries would be quite as dangerous to seal-life, pups, and female seals in their battles and fightings as the proposition you are arguing now, namely, want of *sufficient* number.

Sir RICHARD WEBSTER.—I ask you, Senator, kindly to give your attention to the matter: when we know enough to be able to say what is the right and exact proportion so that we may inculcate peace, and not quarreling among the bulls, and still get the best bulls, perhaps that is a claim which the United States, from a moral point of view, may be able to advance. If they are able to advance it, well and good. But will you kindly, in justice to me remember what the United States Commissioners have said? The United States Commissioners have said that want of sufficient virile males will produce deterioration to the herd. It is not a question of what ought to be the condition, but what is the cause of the present condition of the herd?

Senator MORGAN.—I do not feel bound by the opinion of the United States Commissioners or by the opinion of any other man from which I dissent.

Sir RICHARD WEBSTER.—Nobody suggests, Senator, that you are bound by anybody's opinion or view except your own; but I do say, in

arguing the matter I should not be performing my duty if I did not bring this into notice.

Senator MORGAN.—That is exactly what I am trying to get you to do.

Sir RICHARD WEBSTER.—My point is this: that when I have shewn by the testimony that has been read both by Sir Charles Russell and by myself, that the selection of the females to form a harem, in the ordinary life of the seal, was by the male—when I call attention to a respectable gentleman who describes that in which the male takes no part, I think. I am not ill-founded in making the suggestion that the contrast points strongly in the direction of there not being proper virile power upon these rookeries.

Senator MORGAN.—Neither am I ill founded in trying to find out the truth about it.

Sir RICHARD WEBSTER.—I am not conscious of having said anything which could point in that direction.

Then Mr. Stanley Brown says:

The size of harems, therefore, has of itself,

This is important with reference to the Commissioners' statement.

The size of harems, therefore, has of itself but little to do with the question of the lack of virile males, but indicates only the selective power of the females.

That is in teeth of the Commissioners' statement which I read this morning. Now I was challenged by my friends, and quite properly with reference to what I was referring to.

I refer first to the language of Mr. Bryant, their own witness, at page 385 of Allen's monograph, where says:

Immediately on landing—

that is the females.

they are taken possession of by the nearest males, who compel them to lie down in the spaces they have reserved for their families. For a few days the females arrive slowly, but by the 25th of the month thousands land daily.

That is the month of June. Then it goes on:

As soon as the males in the line nearest to the shore get each seven or eight females in their possession, those higher up watch their opportunity and steal them from them. This they accomplish by seizing the females by the neck as a cat takes her kitten. Those still higher up pursue the same method until the entire breeding space is filled. In the average there are about fifteen females to one beachmaster.

That had already been read. I referred to that when I said evidence had been already given upon it.

Now in the 10th Census Report of 1881, of which again I say nobody has ever questioned the accuracy or the truthfulness, from observation, at page 36, under the heading "ORGANIZATION OF THE ROOKERIES", this is the description of it by Mr. Elliott in his first report.

They——

that is the cows——

are noticed and received by the males on the waterline stations with attention; they are alternately coaxed——

this is what I had in my mind when I said I thought it pointed to something which was done almost before the cow left the water, and I will find another reference too.

They are alternately coaxed and urged up on to the rocks, as far as these beachmasters can do so, by chuckling, whistling, and roaring, and then they are immediately under the most jealous supervision; but owing to the covetous and ambitious nature of the bulls which occupy these stations to the rear of the water line and

wayback, the little cows have a rough-and-tumble time of it when they begin to arrive in small numbers at first; for no sooner is the pretty animal fairly established on the station of male number one, who has welcomed her there, than he, perhaps, sees another one of her style in the water from whence she has come, and, in obedience to his polygamous feeling, devotes himself anew to coaxing the later arrival, by that same winning manner so successful in the first case; then when bull number two, just back, observes bull number one off guard, he reaches out with his long strong neck and picks up the unhappy but passive cow by the scruff of her's just as a cat does a kitten, and deposits her upon his seraglio ground; then bulls number three and four, and so on, in the vicinity, seeing this high-handed operation, all assail one another, especially number two, and for a moment have a tremendous fight, perhaps lasting half a minute or so, and during this commotion the little cow is generally moved, or moves, farther back from the water, two or three stations more, where, when all gets quiet again, she usually remains in peace.

Senator MORGAN.—I think, only in justice to myself, I should observe that is the very evidence upon which I ventured to make the suggestion to you that there might possibly be injury to the seal herd from excess of bulls upon the rookery.

Sir RICHARD WEBSTER.—I have never, Senator, denied it. It has no bearing with great respect upon my argument. My argument is not that there may not be too *many*, but there may be too *few;* and I do not suppose that you Sir would be disposed to question that—that there may be too few. The point of this is to see whether there are too few or not, and whether that has been the cause of the decrease.

Now I have read from the evidence with regard to this matter, but before I go further to Mr. Elliott's report will the Tribunal be kind enough to oblige me once more by taking volume 3 of the Appendix of the British Case. It is part 3. I ask you, Mr. President, to be good enough to refer to it so that you may see that people were perfectly conscious of what Mr. Elliott was doing at this Island at the time. I am going to read, first, from Mr. Goff's Report at page 15:

Professor W. H. Elliott, your recent appointee as Treasury Agent has spent the season here, dividing his time between the two Islands, and giving his entire attention to the state of the rookeries and the methods used at present in driving and killing the seals, and his report will, no doubt, be of the utmost importance and of great value to the department.

Then at the bottom of the same page there is a passage about driving that need not be read now, but it must be read later on.

And on page 17, the third paragraph:

There is but one authority upon seal life, especially the seals of the Pribilof Islands, and this is the work of Professor Henry W. Elliott, who surveyed these rookeries in 1872 and 1874, and his work was verified by Lieutenant Maynard and I am satisfied was as near correct when made as was possible for man to chronicle, but to-day there is a marked contrast in the condition of now and then.

A little lower down, sir:

To the extreme south-west of the island is the Reef Rookery, reported to have (by Professor Elliott) 301,000 seals in 1874. It has not over 100,000 seals to-day. "Garbotch", the adjoining rookery, where the Professor says he stood on Old John Rock and saw "10,000 fighting bulls", I can stand and count every bull in sight. This rookery with the reef is an extending point, etc., on that point.

Then Mr. Murray's Report, page 19.

The PRESIDENT.—The figures seem to be excessive, in regard to the diminution there mentioned.

Sir RICHARD WEBSTER.—I was not on the question of actual diminution. I was merely on the question of the knowledge these gentlemen have of Mr Elliott. Would you please look at page 19? I will not fail to regard what you say about the actual diminution, Mr. Presi-

dent. At page 19 is the report of Mr. Murray of the 31st of July 1890, the last paragraph but two, on that page:

The meeting was adjourned from time to time until they had thoroughly discussed the most important questions raised, and at the last meeting, held 23rd May, they unanimously declared that it was their firm belief and honest opinion that the seals had diminished and would continue to diminish from year to year, because all the male seals had been slaughtered without allowing any to grow to maturity for use on the breeding-ground.

That is Mr. Murray's statement in 1890, perfectly independent of Mr. Elliott's report, before it had been published, at a meeting, reporting to his Government from St. George Island of what had been the result of his investigation in that year, 1890; and that is quite as strong, though not so valuable in its bearing, and the deductions to which it leads, as anything in Professor Elliott's report.

The PRESIDENT.—That is not the opinion of Mr. Murray; that is the opinion of the natives.

Sir RICHARD WEBSTER.—I am quite aware of that, Mr. President. As a matter of fact, it is the opinion of Mr. Murray, too. But I am not upon that for the moment. Would you kindly look at the next paragraph:

I made a note of the suggestion on the journal that day, and I am now fully convinced by personal observation that it is only too true, and that the natives were correct in every particular.

But you, Mr. President, were perfectly right in one sense. I was not calling attention to it for the purpose of endorsing or proving Mr. Murray's opinion. I do so now because you directed my attention to it. But the significance of it is this: that long before the report upon which it has been attempted to throw discredit, had been published, the Treasury agents, reporting independently, had said identically the same thing in regard to this matter.

Then Lavender. He reported on the 26th of July, 1890. You will find it on page 21. I will not read it again, because I read it this morning; but I only call your attention to the passage. It begins:

The writer was surprised when he visited the rookeries, to find no young bull seals upon them.

That was written on the 26th of July, 1890, from St. George's Island to the Government.

On the 31st of July, at page 48, Nettleton, writing from St. Paul, says:

In relation to the condition of the seal rookeries and hauling-grounds of this island, I do not feel called upon to go into details in view of the full and exhaustive manner in which the subject is treated in your Report of this year, and also in view of the forthcoming Report of Professor H. W. Elliott, who was sent by the Department especially to examine and report upon the condition of seal life on this and the Island of St. George.

Does any man believe that if Mr. Elliott's report did not represent fairly what it was, that some of these other agents who had been eyewitnesses of the fact which he had described, and had partially described it themselves, would not have been called upon immediately to report as to the real facts by the United States Government? Not one of these is asked to report—not one of the experienced men, but an entirely fresh mind is sent in the year 1891, who had no experience whatever of the seal islands.

The PRESIDENT.—Mr. Nettleton did not make his report to the Government, but to Mr. Goff.

Sir RICHARD WEBSTER.—He reports to Mr. Goff. From my point of view it makes no difference, because it is intended to be forwarded to

the Government, and it is so forwarded. The duty of each of them is to report through their chief to the Government. I quite admit that it should be described as a report by Mr. Nettleton to Mr. Goff; but it came to the United States Treasury Department.

Now, Sir, as I have touched upon this, will the Tribunal kindly favor me by letting me call their attention to the character of this report of Mr. Elliott's? I am making a very great draft upon their patience, but it really is important that it should be understood. I will not refer to it except in connection with one subject afterwards; but if you, Mr. President, will be kind enough to take it before you, you will find that in his letter to Mr. Windom of the 17th of November, he describes his appointment, and he says he went there supposing he should find everything to be occasioned by pelagic sealing; and it is the strongest evidence in favor of the impartiality of this report that nobody condemns pelagic sealing more than Mr. Elliott does. He is perfectly entitled to do it from the point of view of regarding what he was reporting, that is to say, the interest of the United States. At the first page in Roman numerals, just underneath the date, the second paragraph begins:

I may as well frankly confess, at the outset, that I was wholly unaware of the extraordinary state of affairs which stared me in the face at the moment of my first landing, last May, on the Seal Islands of Alaska. I embarked upon this mission with a faint apprehension of viewing anything more than a decided diminution of the Pribilof rookeries, caused by pelagic poaching during the last five or six years.

But from the moment of my landing at St. Paul Island on the 21st of last May, until the close of the breeding season those famous "rookeries" and "hauling grounds" of the furseal thereon, and of St. George Island, too, began to declare and have declared to my astonished senses the fact that their utter ruin and extermination is only a question of a few short years from date, unless prompt and thorough measures of relief and protection are at once ordered on sea and on land by the Treasury Department, and enforced by it.

Quickly realizing after my arrival upon these islands that a remarkable change for the worse had taken place since my finished work of 1874 was given to the public in that same year, and the year also of my last survey of those rookeries, I took the field at once, carrying hourly and daily with me a series of note books opened under the following heads:

And those you are aware, Sir, are all verbatim annexed to the Report. Would you let me call your attention to page 4. He had cited from his report of 1872–74. I read from the middle of page 4:

In 1872–74 I observed that all the young male seals needed for the annual quota, of 75,000 or 90,000 as it was ordered in the latter year, were easily obtained every season, between the 1st of June and the 20th of July following, from the "hauling grounds" of "Tolstoi", "Lukannon" and "Zoltoi Sands"—from these hauling grounds adjacent to the "rookeries" or breeding grounds of "Tolstoi", "Lukannon", "Reef" and "Garbotch". All of these points of supply being not more than one and a half miles distant from the St. Paul killings grounds—the "Tolstoi" drive being less than 600 feet away.

Then he refers to his own work, at page 5:

Therefore, when summing up in my published work of 1872–1874, I was positive in declaring that although I was firmly convinced that no increase to the then existing number of seals on these Islands would follow any effort that we might make (giving my reasons in detail for so believing), yet I was as firmly satisfied that as matters were then conducted, nothing was being done which would injure the regular annual supply of male life necessary for the full demand of the rookeries. I then declared "that *provided* matters are conducted on the seal-islands in the future, *as they are to-day* 100,000 male seals, under the age of five years, and over one, may be safely taken every year from the Pribilof Islands without the slightest injury to the regular birth rates, or natural increase thereon: provided also that the fur-seals are not visited by any plague, or pests, or any abnormal cause for their destruction, which might be beyond the control of men.

Therefore I am justified in saying that he starts with convictions, properly expressed, in favor of the fact that his previous report had been well founded.

Then at the bottom of page 5:

Sixteen years have elapsed since that work was finished: its accuracy as to the statements of fact then published was at that time unquestioned on these islands, and it is to-day freely acknowledged there: but what has been the logic of events? Why is it that we find now only a scant tenth of the number of young male seals which I saw there in 1872? When did this work of decrease and destruction so marked on the breeding grounds there, begin? And how? This answer follows:

1st. From overdriving without heeding its warning, first begun in 1879, dropped then, until 1882, then suddenly renewed again with increased energy from year to year, until the end is abruptly reached, this season of 1890.

2nd. From the shooting of fur-seals (chiefly females) in the open waters of the North Pacific Ocean and Behring Sea, begun as a business in 1888, and continued to date.

Mr. FOSTER.—That should be 1886.

Sir RICHARD WEBSTER.—I did not know.

Mr. FOSTER.—It is a typographical error, I mean.

Sir RICHARD WEBSTER.—Oh, I beg your pardon. I am much obliged for the correction. I thought Mr. Elliott was referring to the fact of the small number in Behring Sea, but I am much obliged to Mr. Foster. I proceed:

Thus the seal life candle has been literally "burning at both ends" during the last five years.

That day in 1879, when it became necessary to send a sealing gang from St. Paul village over to Zapadnie to regularly drive from that hitherto untouched reserve, was the day that danger first appeared in tangible form since 1870—since 1857 for that matter.

The fact, then, that that abundant source of supply which had served so well and steadily since 1870–1881, should fail to yield its accustomed returns to the drivers—that fact ought to have aroused some comment.

Then on page 7:

I can see now, in the light of the record of the work of sixteen consecutive years of sealing, very clearly one or two points which were wholly invisible to my sight in 1872–1874.

This does not appear to be a partisan report.

I can see now what that effect of driving overland is upon the physical well being of a normal fur-seal, and from that sight, feel warranted in taking the following ground.

The least reflection will declare to an observer that while a fur-seal moves easier on land and freer than any or all other seals, yet, at the same time it is an unusual and laborious effort, even when it is voluntary: therefore, when thousands of young male seals are suddenly aroused to their utmost power of land locomotion, over rough, sharp rocks, rolling clinker stones, deep, loose land, mossy tussocks and other equally severe impedimenta, they in their fright exert themselves violently, crowd in confused sweltering heaps one upon the other so that many of them are "smothered" to death and in this manner of most extraordinary effort to be urged along over stretches of unbroken miles, they are obliged to use muscles and nerves that nature never intended them to use, and which are not fitted for the action.

Then occurs another passage with reference to driving. I need not read it through, if the Tribunal will kindly run their eye through it. There is a passage at the bottom:

When they arrive on the killing grounds after four or five hours of this distressing effort on their part, they are then suddenly cooled off for the last time prior to the final ordeal of clubbing: then when driven up into the last surround or "pod" as the seals are spared from cause of being unfit to take, too big or too little, bitten, etc., they are permitted to go off from the killing ground back to the sea, outwardly unhurt, most of them; but I am now satisfied that they sustain, in a vast majority of cases, internal injuries of greater or less degree, that remain to work physical disability or death thereafter to nearly every seal thus released, and certain destruction of its virility and courage necessary for a station on the rookery even if it can possibly run this gauntlet of driving throughout every sealing season for five or six consecutive years; driven over and over again as it is during each one of these sealing seasons.

Mr. Elliott is not alone in this opinion, Mr. President, by any means. I will show you corroboration of this. I merely mention this for the purpose of bringing to your mind what will be the effect, the double

effect, of killing off all the bigger seals, and at the same time redriving those that are allowed to grow up, if they happen to escape.

I ought perhaps to read the last paragraph on page 8:

With this knowledge, then, the full effect of "driving" becomes apparent and that result of slowly but surely robbing the rookeries of a full and substantial supply of fresh young male blood, demanded by nature imperatively, for their support up to the standard of full expansion (such as I recorded in 1872-1874)—that result began, it now seems clear, to set in from the very beginning, 20 years ago under the present system.

Then lower down on the same page:

Naturally enough, being so long away from the field, on reading Mr. Charles J. Goff's report for the season's work of 1889, I at once jumped to the conclusion that the pelagic sealing, the poaching of 1886-1889 was the sole cause for that shrinkage which he declared manifest, on those rookeries and hauling grounds of the Pribilof Islands.

Mr. Justice HARLAN.—Did Mr. Goff make two reports?

Sir RICHARD WEBSTER.—One has been produced to us, Sir. I referred to it this morning at page 84 of the first Volume of the Appendix to the Counter Case. Whether he made another or not, I do not know. If he did make another, it has not been produced; but I should like, as the Judge has put that question to me, to read a passage from this very report, where after referring to the pelagic sealers as pirates, anticipating the argument of Mr. Carter, he says:

If these piratical vessels were allowed to butcher the seals regardless of sex and age, the seals of Alaska will soon be exterminated. The prosperity of these world-renowned rookeries is fast fading away under the present annual catch allowed by law, and this indiscreet slaughter now being waged in these waters will only hasten the end of the furseals of the Pribilof Islands.

Therefore I call attention to the fact that the reports made by Mr. Goff in the year 1890—most careful reports—with regard to the effect of driving, as you will see later on, and corroborating Mr. Elliott with regard to the absence of bull seals, are made by people who are certainly as desirous as they can be of supporting the United States case.

Senator MORGAN.—Sir Richard, I have made no harsh commentary upon Mr. Elliott while this case has been going on, and I do not propose to make any now; but it is a subject that ought to be inquired into, whether he, having recommended that 100,000 seals could be taken profitably to the seal herd and to the United States—

Sir RICHARD WEBSTER.—In 1878.

Senator MORGAN.—In 1878; having recommended that, and the Government having observed the policy which he recommended without question at all, is he not particularly interested in showing that the loss of numbers in the seal herd was not due to following his advice, but was due to some other cause?

Sir RICHARD WEBSTER.—I should have thought so, and he should have endeavored to put it upon pelagic sealing; but I beg to observe that it is because they have gone on taking the 100,000 annually, that he honestly and candidly said he was wrong.

Senator MORGAN.—I do not dispute that at all; but it is a little unfortunate that the Government, having followed his advice, has no right now to question his statements or opinions about it.

Sir RICHARD WEBSTER.—It is not a question of no right to criticise his opinions. They have every right. My learned friends have not heard from me a single word to the effect that they have not the right to criticise his opinions. I was prepared to show the circumstances under which and the knowledge with which Mr. Elliott reported, and you know what Mr. Phelps said yesterday in regard to the matter. Criticise this

report as much as you like. Say the opinions are wrong; but as a record of what was seen in the year 1890 it is honest and truthful, and being honest and truthful, it must be regared by this Tribunal. I have never suggested, Mr. Senator Morgan—I say it with great respect,—I have never suggested any doubt of the right on the part of members of the Tribunal to question the opinions of any of these gentlemen, Dr. Dawson, Sir G. Baden-Powell, Mr. Palmer, Mr. Elliott, Mr. Goff—any of them; but at the same time the Tribunal have got to be satisfied that it is this pelagic sealing which has caused this decrease. I will show that it cannot be. But I am at present following out the line indicated at page 349 of the United States Commissioners Report:

The life of the seal herd, then, depending as it unquestionably does on the constancy of the number of births, can be endangered from two directions: First, from the killing of fertile females; and, second, from the excessive killing of males, carried to such an extent as to prevent the presence of the necessary number of virile males on the breeding rookeries.

That is not suggested to be otherwise than a fair test, unless the United States Commissioners, who are belauded by my learned friends in the most glowing terms, are to be thrown overboard at the last moment. I have read today warning after warning that the 100,000 seals were too many. It is no answer to my argument to say Mr. Elliott made a mistake in 1874. The Tribunal cannot absolve themselves from any responsibility by saying that it was Mr. Elliott's mistake or anybody's mistake. I am calling attention to these facts to show that the absence of virile males on these rookeries has been an all powerful cause of deterioration of the seal race and of the absence of the number of seals from the islands.

Mr. President, I do not know whether you think I am exceeding my duty if I respectfully ask this Tribunal to be good enough to read this report for themselves and judge of it; because in my respectful submission to the Tribunal, the best judgment is obtained by reading the whole, and I am perfectly willing that it shall be considered that I am only calling attention to specimens, and that anything that may be said against me, or in any way in which it is thought I have been overstating the matter, shall be judged by the contents. But there are one or two passages to which I ought to call attention. If you will kindly look at page 88, you will see the status of 1872 and the status of 1890 compared in parallel columns, showing that the natural incidents of seal life in connection with the arrival and the dates at which they came to the island are shown to occur at the same time, and about the same period in the year 1890 as before:

STATUS OF 1872.	STATUS OF 1890.
1. On the rookery ground the Bulls were all by June 1st.	1. On the rookery grounds the Bulls were all by June 1st.
2. Located on this ground then no further apart than 6 to 10 feet, and	2. Located on this ground, now from 15 to 150 feet apart and are inert and
3. were very active, incessantly fighting with the	3. somolent: I have not seen a single fight between the bulls yet.
4. thousands upon tens of thousands of "1 2 bulls" or polseacatchie, which were then trying to land upon the breeding belt of sea-margin, provoking and sustaining a constant fight and turmoil there, but being almost invariably whipped off by the old bulls, stationed there.	4. Not a single "1/2 bull" or polseacatchie attempting to land and serve the cows—not a single one have I been able to observe—in fact there are none left: those that exist have been ruined as breeders from the effects of driving: and several thousand of these broken spirited bulls, old and young now loafing on the outskirts of these rookeries, and hauling out with the small holluschickie on the sand and rock margins.

Of course, the photographs in this case corroborate that to the letter, and the picture which Mr. Stanley Brown gave exactly corroborates it, that these bulls were not the fighting, quarreling bulls that had been the typical feature of these rookeries before.

5. Cows began to arrive on the breeding grounds by 4th to 6th of June: and all arrived in good form by July and were	5. Cows began to arrive on the breeding grounds by 4th to 6th of June, all arrived as a rule by July 10, and were
6. located on the breeding-ground in compact solid masses uniformly distributed over a given area of ground no matter how large or small.	6. located on the breeding grounds in scattered harems, solidly here, one or two harems, then a dozen or so families scattered over twice and thrice as much ground as they should occupy if massed as in 1872–74. The scant supply of, and wide stations and feebleness of the bulls is undoubtedly the reason for this striking change in their distribution as they ordered it in 1872–74.

If this is not a fair statement, of the facts, why have not any of the experienced people been called to contradict it. It is all very well to send a gentleman, however distinguished and however honest, to make his observations, which in fact corroborate this; but where are the experienced agents who can contradict it, and who have not been called?

7. A general average of 15 cows to 1 bull was the best understanding: once in a while a peculiar configuration of the breeding ground enabled one bull the chance to pen up 35 or 45 cows, but it was seldom witnessed.	7. A general average of 45 or 50 cows to 1 bull is the best estimate that can be made to-day: there are so many harems of 60 and 75 cows in charge of one bull to each, and frequently single harems of 100 to 120: cows that it makes the general average of 45 to 50 very conservative.

Mr. President, you will not have forgotten that Mr. Stanley Brown, in the affidavit which I read today, referred to the harems running up to 75 cows in 1891. Now here the same statement which, if the allegation had been untrue, persons there in the year 1890 could have contradicted it. No amount of statement that there are fewer animals on the islands contradicts the point of this remark, which is directed to the general virility of the bulls and the attraction that that bull affords to females who are influenced by the sexual passion.

Would you look, Mr. President, at the last comparison, No. 8, at the bottom of page 89?

The PRESIDENT.—We have read it.

Sir RICHARD WEBSTER.—Then if you will turn back to page 74. This is in answer to the criticism by Senator Morgan of this man. I read from the bottom of the page:

I was right in then assuming that no increase could be noted over the record of 1872–74; but I was wrong in then believing that no injury to the regular supply of young male life necessary for the full support of the breeding grounds, would follow from the driving and killing of the holluschickie as conducted: also the deadly work of the pelagic sealer was not suggested in any serious sense sixteen years ago, and I did not take it into calculation. I have given, in my letter of introduction, the reason why this driving of the holluschickie, has been so destructive to young male seal life—a reason which I could not grasp in 1872–74 since it required time and experience to develop the fact beyond argument and contradiction. It is easy to see now in the clear light of the record that had there been no poaching at sea and had every young male seal been taken in every drive made from the outset in 1871, over one year old and under five, the annual quota of 100,000 would have been easily filled without injury whatsoever in less than twenty working days from the 14th of every June, with only one quarter of the driving necessary under the past and present order of culling out the largest seals for slaughter, and releasing the smaller ones from each drive, when on the killing grounds;—in other words, taking all the young

male seal as driven, over one year old and under five years would have saved on an average for every year the lives of at least 50,000 to 60,000 holluschickie, while those spared from the club annually, during the last 20 years have nevertheless perished, or, surviving, were yet rendered worthless for rookery service from the immediate or subsequent effect of severe overland driving.

When I remind you again, Mr. President, in this connection that owing to the complaint with regard to the size of the skins, and the evidence shows they were killing during these years every seal that was big enough to kill.

The PRESIDENT.—Do you mean that according to Mr. Elliott's observation and impression.

Sir RICHARD WEBSTER.—In 1890.

The PRESIDENT.—Altogether—in 1890 if you like—that the driving in the Russian time for instance, would have been less violent and less rough than it is now.

Sir RICHARD WEBSTER.—The evidence is that they have been driven much further and driven much more frequently. I will not neglect that point, Mr. President. They have been driven much further and driven much more frequently, and the same seal has been driven for this long distance more than once—several times during the same year, and it follows from this simple reason the Islands were not worse from 1830 to 1870 than they were from 1870 to 1890. During the period from 1830 to 1870, *ex concessis*, there was no pelagic sealing. The Russian average is under 40,000. It is a considerable over statement to speak of it, I believe, as 40,000 over those years, and consequently less driving was required and excluding the consequences of raids and the taking of the pups referred to in the evidence to-day, it is not that the same driving had a greater effect—Mr. Elliott never suggested that for a moment. The fact is, which Mr. Elliott and other persons equally independent and equally observant call attention to, that driving has been carried on in late years in a way that would injure seals to a greater extent than it has been before.

Now on page 91 you will see the conclusion:

It seems from the foregoing surveys that at the close of the season of 1890, there are still existing upon the Pribilof rookeries 959,000 seals, old and young and pups of this year's birth, or about one third of the whole number of breeding seals and young recorded as being there in -74, how then can they be so near the danger of extermination, though they are in danger of it?

The explanation is as follows:

1. There is but one breeding bull now upon the rookery ground where there were fifteen in 1872: and the bulls of to-day are nearly all old and many positively impotent.

2. This decrease of virile male life on the breeding grounds causes the normal ratio of 15 or 20 females to a male as in 1872–74 now to reach the unnatural ratio of 50 to even 100 females to an old and enfeebled male.

3. There is no appreciable number of young males left alive to-day on these "hauling" or non-breeding grounds to take their place on the breeding grounds, which are old enough for that purpose, or will be old enough if not disturbed by man, even if left alone for the next five years.

4. Meanwhile the natural enemies of the fur-seal are just as numerous in the sea and ocean as they ever were—the killer-whale and the shark are feeding upon them just as they did in 1872–74.

5. Therefore, we have destroyed by land and by sea the equilibrium which nature had established in 1868 on these rookeries, and we must now restore it, or no other result can follow save that of swift extermination.

6. That condition of 1868, being restored, then that surplus male life can be taken again under better regulations than those of 1870, and the pelagic sealing can be restricted to proper limits, so as to enable the fur-markets of the world to have a regular supply for all time to come.

The PRESIDENT.—It would be inferred from that that a regular supply would reach a certain number only—whether it is taken by sea or by land.

Sir RICHARD WEBSTER.—Yes, that must be so.

The PRESIDENT.—A limitation of the number. How could you limit the number at sea.

Sir RICHARD WEBSTER.—We know perfectly well that that limits itself to a very large extent, but I am sure you will allow your mind to follow the line on which I desire to argue. I point out that the diminution of the seal life upon the islands is not due and cannot be due to pelagic sealing.

Lord HANNEN.—That is with reference to what regulations should be made, and then arises the difficulty of applying it.

Sir RICHARD WEBSTER.—I will point it out, of course, at the end, but perhaps I may be permitted to make the observations before.

Our contention is it is not intended you are to regulate pelagic sealing so as to enable 100,000 or any other maximum number to be taken upon the islands. You are not to regulate pelagic sealing to allow an excessive quantity to be killed upon the islands. You are to regulate so as to do what is necessary, as far as pelagic sealing is concerned, to prevent the extermination of the herd. That does not mean that they are to exterminate them upon the islands; and you, Mr. President, have been so good as to show you have been following me. Take this case. Suppose it is true there is only one breeding bull instead of 15, it means that a large number of cows will not be effectually served, and a great many more cows will fail to bear pups, and consequently many of the cows will not come back to the islands again, by reason of not having a pup, and therefore not having the instinct which induces them to return. This has a direct bearing on the question of the maintenance of sufficient supply of virile bulls. Now page 104 he refers to the driving:

> Ever since 1879–82 the surplus young male seal life has been sensibly feeling the pressure of the overland death drive, and the club; harder and harder became this wretched driving to get the quota in 1883–84; finally when 1886 arrived, every nook and cranny on these islands that had hitherto been visited by the "holluschickie" in peace was now daily searched out,—close up back of, and against the breeding rookeries, under every cliff wall by the sea, over to South-West Point, and to Otter Island, and even the little islet, Seevitchik Kamman, under the lee of the Reef was regularly hunted out.

I need not have read that passage in such detail, but I will tell you how I will deal with that part of the case. I shall show you by the reports of Mr. Elliott, I shall show you by the report of Mr. Goff, I shall show you by the report of Mr. Murray, that instead of being able to get from 50 to 60 per cent killable seals out of a drive they were only able to get 14, 15, and 16 per cent.

They were turning back as much as from 86 to 90 per cent of the seals driven, so that the youngest seals and those less able to bear the strain of driving were being rapidly driven to force up this quota of 100,000 seals out of the supply that was on the islands. I do not hesitate to put before the Tribunal that that does mean a serious injury to the life of a seal; and applying all general principles the seal is not likely to be such a good bull when he comes to the time of service, as he would be if not over-driven.

The PRESIDENT.—How do you explain the quota? If there are less young seals one would think the proportion of those taken and kept would have been smaller.

Sir RICHARD WEBSTER.—That is exactly the point to which I desire to bring your mind. If it was true that pelagic sealing year by year was killing the pups, the proportion of the young, or one-year-old, to the

four and five-years-old, would have been lessening, and you would have had more large seals in proportion. Now, what do we find. It is in evidence that there are fewer four or five-year-old, and a large proportion of pups, and that shows, therefore, that some other cause than the death of the pups, or the death of the mother and pups, is affecting seal life.

The PRESIDENT.—It shows something which has prevented it, but if there are so many young ones that proves that the old bulls do their service.

Sir RICHARD WEBSTER.—May I point this out. If I do not make it clear I am sure you will ask me to repeat it. I say the evidence shows pups of one year and two years old are being constantly driven. I say the evidence shows the increasing difficulty of getting a four or five-year old seal. They find a much larger proportion of one and two-year-old seals among those driven, that is to say, something has happened which prevents seals reaching four or five years, and it must be one of two things that almost every seal of that age is killed, if the driving these young seals prevents them coming to the age of four or five—there is abundant testimony on this, and do not think it is my imagination, because I have not imagined a single thing in this case—I am merely pointing out, supposing in the year 1890 they drive 10,000 seals, and in order to get enough big seals they turn back 80 per cent; and suppose in 1891, driving the same number of seals in order to get an equal number they have to drive them twice and turn back 90 per cent, I say to you as a proposition of mathematics, if the decrease in the total number, had been caused by the death of pups, you would have the proportion of three and four-year-old seals, to the pups, increasing instead of decreasing, whereas if you find in the following year that the proportion of three and four year old seals, or larger seals, has diminished, it means that the one or two year old seals have died or not come to maturity. I challenge criticism upon that argument.

I say that anybody who will look at this thing fairly and impartially and judicially will be forced to the conclusion that the killing of 30,000 mothers and 30,000 pups in the year they are born will increase the proportion of old seals to be found in the herd next year, and that therefore, if you find that, instead of it being a larger proportion of 4 or 5 year old or 3 or 4 year old, a constantly diminishing proportion, something else is diminishing the numbers besides the killing of the pups. I know I speak to gentlemen who are perfectly competent to criticize any argument I may address to them and that is an argument of which I invite criticism.

The PRESIDENT.—You have made your construction very clear.

Sir RICHARD WEBSTER.—Now, I will digress for a moment, and you will not object as it is in consequence of what you have said, in order to call attention to what Mr. Goff said on this particular point; and the passage I refer to today, at page 15, is directly in point on your question. It is the third part, page 15, at the bottom of that page.

Now, in opening the season it is customary to secure all the two-year-olds and upwards possible before the yearlings begin to fill up the hauling-grounds and mix with the killable seals. By so doing it is much easier to do the work, and the yearlings are not tortured by being driven and redriven to the killing-grounds. Heretofore it was seldom that more than 15 per cent of all the seals driven the latter part of June and the first few days in July were too small to be killed, but this season the case was reversed, and in many instances 80 to 85 per cent were turned away. The accompanying percentage examples will show the disposition of this year's drive. The first killing of fur-seals by the lessees was on the 6th of June, and the scarcity of killable seals was apparent to all.

Now, this is by the gentleman who has to inspect the drives and make the return to the Government in regard to that matter.

I call attention to that. It must be due to the fact that something has happened to the two-year-old seals of the year before or the three-year-old seals of the year before. Somehow or other the seals which have been two and three years old in the year 1889 did not appear in the same proportion as three- or four-year-old seals in 1890.

Now, what does that point to? It points to a death or diminution of the older seals in that year.

Mr. CARTER.—By redriving?

Sir RICHARD WEBSTER.—Yes, by redriving.

Mr. CARTER.—But there was not any redriving in 1889.

Sir RICHARD WEBSTER.—Forgive me; this Report is written in the year 1890, and if there was no redriving in 1889, it is the strongest corroboration of what I say.

Mr. CARTER.—I was not speaking of any argument to be derived from it, but the fact.

Sir RICHARD WEBSTER.—In order that I may not appear to be taking it from Mr. Carter, because I think he will find that it is not quite accurate, we have it now suggested that redriving never began till 1889.

Mr. CARTER.—No; 1890.

Sir RICHARD WEBSTER.—You said 1889; but 1890 will make it stronger. That is what Mr. Goff says. I will not be deflected from my point. I beg my learned friends' pardon; I care not when redriving began. Whatever it was, it was not the death of the pup from pelagic sealing; it is something which prevented the three-year-olds being four-year-olds, and the four-year-olds being five-year-olds.

Would you look, Mr. President, if it is not unduly troubling you, at the following passages?

The season closed on the 20th of July, and the drives in July show a decided increase in the percentages of small seals turned away, and a decrease in the killables over the drives of June, demonstrating conclusively that there were but few killable seals arriving, and that the larger part of those returning to the islands were the pups of last year. The average daily killing for the season was 400, or a daily average of 522 including only the days worked.

In 1889 the average daily killing from 1st of June to the 20th of July inclusive was 1,516, or a daily average of 1,974 including only the days worked. With this undeniable decrease in merchantable seals, and knowing the impoverished condition of the rookeries and hauling grounds, and believing it to be inimical to the best interest of the Government to extend the time for killing beyond the 20th of July, I adhered to the letter and spirit of your instructions to me, and closed the killing season on the 20th of July, against the bitter protestations of Mr. George R. Tingle, General Manager for the lessees;

he was the gentleman who said everything was going on all right.

His communication to me upon the subject and my reply are enclosed. Had there been a reasonable probability of the lessees securing their *quota* of 50,000 seals I should have deemed it my duty to extend the time for killing to the 31st of July.

The killing of the 6th of June, the first of the season, was from the Reef Rookery, with a drive of about 700 seals; the total killed, 116, 83 1/2 per cent. being turned away as too small.

Will any man who values his position in arguing suggest that the larger proportion of smaller seals could possibly be produced by pelagic sealing? It is obvious that it must have been something which has affected the length of life of the two- and three-year old seals. That is perfectly plain.

On the 11th of June, the drive was from the Reef Rookery, about 1,000; total killed, 574; 42 1/2 per cent. turned away. On the 24th of June the drive was from the Reef Rookery and Zoltoi hauling grounds combined, and about 141 were driven;

total killed, 206; 85 1/2 per cent. turned away. This exhausted Zoltoi hauling grounds for a period of twenty one days, and it was not available until the 19th of July, when again, in connection with the Reef Rookery, the last drive was made, and about 3,956 seals were driven; 556 were killed, and 86 per cent turned away. The seals turned away from the several drives invariably returned to the hauling grounds and rookery from which they were driven only to be redriven to the killing field and culled of the few killables that chanced to join them upon their return to the sea from each drive. By referring to the Table marked D., showing the daily killing for this year, and also comparing the same with that of last year, you will see that from all of the drives the same percentages were turned away as from those I have cited.

We opened the season by a drive from the Reef Rookery, and turned away 83 1/2 per cent., when we should have turned away about 15 per cent. of the seals driven, and we closed the season by turning away 86 per cent.

I commend this to my learned friend, Mr. Carter.

A fact which proves to every impartial mind that we were redriving the yearlings, and considering the number of skins obtained that it was impossible to secure the number allowed by the lease, that we were merely torturing the young seals, injuring the future life and vitality of the breeding rookeries to the detriment of the lessees, natives, and the Government.

The contention is, and it is true, that if you kill a mother with the pup dependent upon her, the pup will die and will not get to be one year or even six months old. It is obvious if this is true, that they find this enormously increasing proportion of pups, something is happening to the two-year olds.

The PRESIDENT.—Is Mr. Goff still in office on the Islands?

General FOSTER.—No, he is not.

The PRESIDENT.—He has retired?

Sir RICHARD WEBSTER.—Now at page 16 he has made an affidavit for the United States, and there is no suggestion that Mr. Goff is not a witness or a gentleman who has told the truth in these Reports. Whether or not he may have been too lenient to the lessees I do not care. It is very likely that the lessees were allowed too much, but the fact is this, that these facts—and they are facts—could have been contradicted by dozens of persons, if they were not the truth. Would you let me read to the end of that page, if you please?

It is evident that many preying evils upon seal life—the killing of the seals in the Pacific Ocean along the Aleutian Islands and as they come through the passes to Behring Sea by the pirates in these waters, and the indiscriminate slaughter upon the Islands regardless of the future life of the breeding rookeries have at last with their combined destructive power reduced these rookeries to their present impoverished condition to such an unequal distribution of ages and sexes that it is but a question of a few years, unless immediately attended to before the seal family of the Pribilof group of islands will be a thing of the past.

The PRESIDENT.—I suppose "pirates in the passes" are.

Sir RICHARD WEBSTER.—The pelagic sealers. It is only a statement that they seal *en route*, and catch them as they are coming to the Pribilof Islands.

Senator MORGAN.—Caught them in the passes.

Sir RICHARD WEBSTER.—No, not that they caught them in the passes, but after they have passed through. It is a compendious expression.

Mr. President, there is no suggestion of which there is any record in these papers—unless made in some way which I am not cognizant of—with reference to Mr. Goff which can affect his testimony. That the United States did not like Mr. Goff for telling the truth or thought he was too lenient to the lessees does not militate in any way against the statement of fact. Mind you, this is spoken to by the independent observer Mr. Elliott who went and saw these things himself and never wrote his Report until long after this was written. I should think there

could be no greater testimony to the truth of these facts than that Mr. Goff was no longer in the employ of the United States Government in consequence.

General FOSTER.—I do not want my remark to be understood as meaning he was dismissed by the Government.

Sir RICHARD WEBSTER.—That is a perfectly fair observation.

General FOSTER.—In fact, until very recently he was in the employ of the Government. I am not sure he is not now, but till recently he was in another capacity.

Sir RICHARD WEBSTER.—What I mean is, if there is anything to be said against the position of this man, it should be said openly, but now we know that Mr. Goff is a gentleman who from his position will be regarded as telling the truth. This was said in July 1890 and Mr. Elliotts report I think is the 17th November.

The PRESIDENT.—He was writing it probably at the same time.

Sir RICHARD WEBSTER.—Yes for he refers to things that happened after this date, and various dates in his diaries, and from the point of view of corroboration, I submit it is extremely important. Now, Mr. President, I have only to call attention to the driving, but I am afraid that I have reached my time.

The PRESIDENT.—You can do it if it will not take too long.

Sir RICHARD WEBSTER.—Well, Sir, I am in your hands, but I am afraid I could not do it under twenty minutes at least.

The PRESIDENT.—Then we will take it on Tuesday, at 11,30.

During the temporary absence of Mr. Cunynghame the Tribunal authorizes Mr. Henry Hannen Barrister at Law to perform his duties.

[Adjourned till Tuesday the 20th June at 11,30]

Sir RICHARD WEBSTER.—I have but one other concluding subject to touch, Mr. President, in any amount of detail; and you will remember, Sir, that I had addressed this Tribunal with reference to the existing conditions of the Islands, and had argued to the best of my ability, citing numerous passages of the evidence, that there is the strongest possible testimony to show that the condition of the Islands in the years subsequent to 1886, and I might even say earlier than that, was due to the reckless killing of the male-life for a long series of years. I know or I believe the Tribunal will be good enough to read for themselves the passages in Mr. Elliott's Report that bear upon this; but, in order to complete my statement, I will enumerate the pages that they may appear upon the note.

You will remember, Mr. President, that two features of active male life upon those Rookeries are fights among the males and a proportion as we contend of not more than 15 to 20 females to each male bull as compared with the condition of things which has been described, and of which I gave the evidence of the other day,—practically speaking no fighting at all among the bulls, a large number of comparatively speaking effete bulls and a comparatively few bulls with very large harems.

I call attention to page 24 of Mr. Elliott's report. I will only give you, so that you may have them on the note, the pages, and I ask the Tribunal to be good enough to read the series of extracts. About the middle of the page he speaks of the absence of bulls which formed the striking feature of that changed order of affairs and declares a reduction of more than one half of the females and fully 9/10ths of the males on this rookery.

Then the third paragraph on that page:

Eighteen years ago these slopes of "Garbotch" and the Reef Parade were covered with angry, eager lusty bulls, two and three weeks before the first cows even arrived: they came in by the 5th to the 22nd May in such numbers as to fill the space at close intervals of from 7 to 10 feet apart, solidly from the shore line to the ridge summit, and over, even, so far that it required the vigorous use of a club before we could get upon "Old John Rock" from the rear:

That is the name of the place:

then two, at that time they were fighting in every direction under our eyes.

This season I do not observe a bull here, where I saw at least ten at this time 18 years ago. *Now, not a fight in progress anywhere here,* there are not bulls enough to quarrel, they are now scattered apart so widely over this same ground as to be a hundred and even a hundred and fifty feet apart over ground where in 1872 an interval of ten feet between them did not exist.

Now I remind the Tribunal this is referring to animals of an average of eight years old, and many of them still more. It is most pointed testimony and the Tribunal already know that which I have told them so many times—they will find in Lavender's, Goff's, and the other contemporaneous reports, the strongest independent confirmation of this statement. On page 33, the bottom of the page,

On Lukannon this last summer, while there were two fifths as many cows as in 1872, yet the bulls did not average more than onefifteenth of the number they showed in 1872. On Keetavie

and so on. I do not pause to read the whole passage. I ask the Tribunal to be good enough to note it for consideration. There are many more, but I must make a selection, and I want to call attention to the daily field notes. Would you look at page 232 where they begin, and you will find under each rookery, and giving the date, Mr. Elliott set down what he had actually seen on many occasions. You will find that he refers to the fact of Mr. Goff being with him at times, and he refers to other Treasury Agents being there. I ask the Tribunal to kindly note pages 232, and 233 and 236. You will see there what I had in my mind.

In company with Mr. Goff and Dr. Lutz I made my plotting of the breeding seals as they lay on the Reef and Garbotch to-day.

And then follows a categorical statement of what he saw. I shall ask the Tribunal to be good enough to read for themselves Mr. Goff's affidavit made on behalf of the United States: not a word of qualification of this or a suggestion that this is not a true state of things—not a word.

Then page 242. "A survey of Tolstoi this morning. That is on the 30th July, and on page 243 on the 7th July. The Tribunal must not think that these are exhaustive statements of all the Report contains. The real way to judge of this Report is to read it and picture to yourself what the man was seeing from day to day, and assuming him to be a man of experience, which cannot be denied—a man who had more experience than anybody else, and appointed from a knowledge of his impartiality and sent to report that it was pelagic sealing and nothing else that injured these rookeries—it does enormously strengthen the value of this Report. I pass from that, Mr. President, because I think, at any rate, the Tribunal appreciated my argument on this the other day.

I come now to the third cause of injury to these rookeries and again I say, taking it from the testimony on both sides, that on impartial consideration you must come to the conclusion that, driving, over-driving, and redriving have for years been injuring the male life on these rookeries. I will as briefly as possible put before you the evidence as to this part of the Case, and I will ask the Tribunal to turn to the British Commissioners' Report, paragraph 704. This is what the British Commissioners reported from what they saw themselves before they had the corroborative testimony to which I am about to call attention later on.

I read from paragraph 704:

One of the most important points connected with the method of taking fur-seals on the Pribilof Islands, is that of the driving from the various hauling grounds to the killing grounds. However safeguarded or regulated, the method of driving fur-seals overland for considerable distances must be both a cruel and destructive one. Active and graceful as a fish in the water, the fur-seal is at best clumsy and awkward in its movements on land, and though it is surprising to note at how good a pace it can, when forced to do so, travel among the rocks or over the sand, it is also quite evident that this is done at the expense only of great effort and much vital activity, as well as at serious risk of physical injury. A short shuffling run is succeeded by a period of rest, and when undisturbed, all movements on shore are carried out with the utmost deliberation and frequent stoppages. But when a herd of seals, half crazed with fright, is driven for a distance of a mile or more from the hauling ground to some killing place, already pestilential with the decaying carcasses of seals previously killed, it unavoidably, and however frequently the animals may be allowed to rest, entails much suffering. When the weather is at all warm, or when the seals are pressed in driving, individuals frequently drop out and die of exhaustion, others again are smothered by the crowding together of the frightened herd, and it is not infrequent to find some severely wounded by bites ruthlessly inflicted by their companions when in a high state of nervous tension. It appears also, from information obtained on this subject, that in warm weather seals, during

a drive, occasionally pass into a state of violent spasmodic activity, which is aimlessly maintained till death ensues. Under such circumstances, drives have not infrequently had to be abandoned.

On St. Paul Island, the longest drives now practised are those from Polavina to the vicinity of the salt-house near Rocky Point, and from Tolstoi to the village killing grounds. These are about equal in length, and each not much less than two miles. On St. George, the longest drives are from the Great Eastern Rookery and from Starry Arteel Rookery to the village killing grounds, each being about three miles in length, the time occupied in driving being from four to six hours, according to the weather. Under the Russian regime much longer drives were made, and in the curtailment of these a very considerable improvement has been effected, but the essentially injurious features of the drive remain the same.

On Behring Island, of the Commander group, the drives are short, the longest being about one and a-half miles, from the South Rookery. On Copper Island, on the contrary, the drives generally extend across the island, and are from three to four miles long, very rough, and crossing one or more intervening steep ridges. These drives must be much more trying to the seals than any now made upon the Pribilof Islands, and are, in fact, only rendered possible by extreme caution on the part of the drivers, and by the expenditure of much time.

If it were possible to drive only those seals which it is intended to kill, little exception could be taken to the method of driving in the absence of any better method, but the mingling of seals of varied ages upon the hauling grounds from which the drives are taken, even under the original and more favourable conditions of former years, renders it necessary to drive to the killing place many seals either too young or too old to be killed. It is sometimes possible to "cut out" from the drives many of these unnecessary individuals *en route*, and great care is exercised in this respect on the Commander Islands, though little appears to have been practised on the Pribilof Islands.

It admits of no dispute that a very considerable impairment of the vital energy of seals thus driven, and eventually turned away from the killing grounds, occurs, altogether apart from the certainty that a proportion of such seals receive actual physical injuries of one kind or another, but this appeared to have been recognized on the Pribiloff Islands only within the past two or three years.

Then come a citation from Mr. Goff's report which I have already read.

Now, Mr. President, I want to say a word with reference to the facts of this matter by calling attention to the citations at page 261 of the Counter Case, passages which have already been read and I will not trouble you by reading them again, of a number of people with regard to the cruelty of the drives; but I do want to say one word about Mr. Palmer. And I will ask you to be good enough to turn to pages 187 and 188 of the British Commissioner's Report, where Mr. Palmer's Report upon this matter is set out at length.

Now, what are the facts with regard to this? If you will look, Mr. Palmer, of the United States National Museum, Washington, a gentleman whom it is not suggested had either motive or object in saying what was not true, personally dissected and examined a large number of these seals. The facts are stated at page 188:

When driven into the water the seals are weak from two causes, the drive and lack of food; before they can secure food they must rest, and rest is only obtainable at the expense of that most vital necessity of these animals, their fat. I remember looking with great curiosity for the cause of death of the first dead seal that I found stranded on the beach. Externally there was nothing to indicate it, but the first stroke of the knife revealed instantly what I am confident has been the cause of death of countless thousands of fur-seals. It had been chilled to death; not a trace remained of the fat that had once clothed its body and protected the vital organs within. Since the day that it had escaped from the drive, it had consumed all its fat in the effort to keep warm, and nothing remained but to lie down and die. I opened many after this, and always discovered the same, but sometimes an additional cause, a fractured skull perhaps. I have even noted those left behind in a drive, and watched them daily, with the same result in many cases. At first they would revel in the ponds or wander among the sand dunes, but in a few days their motions became distinctly slower, the curvature of the spine became lessened; eventually the poor brutes would drag their hind flippers as they moved, and in a few days more become food for the foxes. In every case the fat had disappeared.

It will be seen also that by this driving process the 2- or 3-year-olds, which are the only ones killed for their skins, are culled out almost completely from the seals which visit these islands, and therefore that very few male seals ever reach a greater age; consequently, there are not enough young bulls growing up to supply even the yearly loss on the rookeries, much less to provide for any increase.

I ask, if that is not true, why have not we the evidence of people who, in 1891 and 1892, opened and examined these seals? There have been openings and examinations of pups quite properly to make out their death was due to the pelagic sealer. There was an examination in 1891 of pups to show that there was no trace of organic disease; and I want to know if it be not true that this driving has this effect,—nobody suggests that Mr. Palmer is not experienced, nobody suggests that he is not honest; and he personally opened these seals himself and he stated, speaking to a scientific society, the result of his own observations. But it does not rest only on Mr. Palmer though that would be a very, very strong fact if it stood alone. I remind you again, and I will not stop to read them because most of them have been read already, on page 261 of the British Counter Case you will find a collection of extracts of persons who have spoken on this matter.

Now, I will ask you to be good enough to take volume I of the Appendix to the Counter Case, and to look at what was observed in the years 1891 and 1892 by Mr. Macoun. I read from page 152 of the 1st volume of the Appendix to the Counter Case.

When on the Pribilof Islands I was present at four "food-killings", three on St. Paul Island and one on St. George Island, and was thus enabled to observe carefully the methods employed by the agents of the North American Commercial Company, and the natives working under them, in selecting from the thousands of seals driven to the killing-grounds the few hundreds that were to be killed. I had expected that the driving and killing of these seals would be under the direct supervision of an officer of the Government, for while it was well understood that the skins of the seals killed would be taken over by the Company, the object of the killing during the *modus vivendi* was supposed to be not for the purpose of taking skins for the Company, but to supply the natives with food. I did not myself accompany the natives during the whole progress of a drive from the hauling-grounds to the killing-grounds, but on three occasions on St. Paul Island I accompanied the drive for some distance before the killing-grounds were reached. On none of these occasions did an officer of the United States Government see anything of the seals until they were all driven together near the killing-ground, and once the killing had to be delayed for some time until the Treasury Agent reached the ground. Once only on either island did an officer of the Government in my presence interfere in any way with the natives or the agents of the Company in their work of clubbing and skinning the seals, or make to them any suggestion as to which seals ought to be killed and which spared, and the number of seals killed on every occasion depended not upon the wants of the natives, but entirely upon the number there were in the drive that were thought by the agents of the Company to be of a size that would give to them skins of the greatest value. The one instance referred to above was at the killing on the 1st of July. A seal with apparently a broken shoulder was allowed by the natives to escape though they noticed its condition. Colonel Murray,—

he was one of the Government Agents, and I have read his Report before,

then ordered one of them to go after it, and it was killed. At this killing less than 300 skins were taken. A careful account was kept by me of the number of seals that were driven up to the clubbers, and were allowed to escape after having been huddled together on the killing-ground, while those of a killable size were selected from the drive.

But 14.1 per cent. of the whole number of seals driven at this time were killed, while among those that escaped I counted seventeen that were badly enough bitten or wounded to bleed considerably, and there were doubtless many more that I failed to notice. Three of those injured were young seals that had evidently been struck by the clubbers, as they were badly cut about the head. One seal, about 6 years old, that had been wounded in the belly, was allowed to escape. I went to where it had rested for a few minutes, and found as much clotted blood as would have filled a breakfast cup. Another seal had a gash in its back about 5 inches long, and though

a four-year-old seal of the size that was being killed was allowed to go free, as the skin had been injured. A wounded or bleeding seal was to be seen in nearly every small pod of from thirty-five to fifty that passed through the hands of the clubbers. There were, of course, many others that had blood on them that had come from the killed or wounded seals, but on the seventeen referred to above the wounds could be plainly seen.

At the killing of the 25th of July one young seal escaped with a broken nose, and another with an eye hanging out. Such things attracted no attention from either the natives or the officer of the Government or Company, being apparently considered by them to be quite matters of course.

I noticed at every killing on St. Paul Island at which I was present, that as each little pod of seals was driven from the killing ground to the lagoon 20 or 30 yards away, one or more lagged behind the others, moving with great difficulty, and by means of their fore-flippers only, as if their backs or hinder parts had been hurt in some way. They seemed to revive after the water was reached, and it was not possible for me to determine whether the injury was of a kind that would affect them permanently or not.

No better proof of the injury done to seals by driving could be had than to walk along the route followed by them when driven from a hauling-ground to the killing ground. The ground is on all sides strewn with bones; and if there has been a recent drive, many rotting carcasses are also to be seen. The day after a drive from Middle Hill I walked for about a mile from the salt-house along the route over which the seals had been driven, and found seventeen carcasses of seals that had become overheated, and had been killed so that their skins might be saved. I found one dead seal lying in a small pond of water, about a mile from the killing grounds, through which the seals had been driven; it had no doubt become exhausted, and, lying down there, had escaped the notice of the drivers. The fur was still good. The carcasses referred to above were all of animals of the size of which the skins would be of the weight required by the Company, and much better able to bear the fatigue of the long drive than the younger ones.

As actual counting at four killings show that less than 20 per cent of the seals.

This is very important in reference to what was subsequently discovered as the observations of Mr. Elliott, Mr. Goff, Mr. Lavender, and Mr. Murray in the year 1890, of which Mr. Macoun had no knowledge when his (Mr. Macoun's) Report was written.

As actual counting at four killings show that less than 20 per cent of the seals driven were of what the Agents of the Company considered a killable size, the number of young seals hurt while being driven must be very great, but not, I think, greater than those injured when the seals are huddled together surrounded by the clubbers. With no escape in any direction they draw nearer one another, until they are at last crowded so closely together that little more than their heads are visible, except when one of the larger seals struggles out from among the others; if of a killable size, it is knocked on the head and falls back into the struggling mass. The "pod" is continually poked and stirred up by the clubber, in order that the seals may be kept moving and when all that are of the proper size have been clubbed the others are driven from the killing grounds, with cries from the clubbers and the beating of pans by the attendant boys. If by chance a "killable" seal escapes with the younger ones, a club is thrown at it, and though many are struck in this way, I never saw one stunned or prevented from reaching the lagoon, a short distance away. Whether such seals receive permanent injury it is impossible to say, but the throwing of the club at them always appeared to me an act of wanton cruelty or a sort of pastime to amuse the clubbers while the next "pod" of seals was being driven up.

While the seals were huddled together on the killing ground the clouds of steam rising from them shewed plainly the over-heated condition of the animals.

Sir, there are before the Tribunal photographs of these animals while they are being driven. You will find at pages 30 and 31 of the original Census report of Mr. Elliott the description of the way in which these animals move, and I must say I think in the face of this evidence the statement that the pelagic sealer was a man actuated by a taste for cruelty was rather unfortunate in the argument of the United States speaking of this in the knowledge of the evidence we now have before us I do not think that those who are so enamoured of this method of killing on the islands can boast very much on the score of cruelty. Probably it had better be left out of the argument altogether so far as

they are concerned. But Mr. President in this connection will you be good enough to look at the corroboration from Mr. Elliott's report of this matter and I will ask you to look at page 104. Again I am not pretending to read all the paragraphs, but there are some here I wish to direct attention to.

Ever since 1879-'82 the surplus young male seal life has been sensibly feeling the pressure of the overland death drive, and the club; harder and harder became this wretched driving to get the quota in 1883-'84; finally when 1883 arrived, every nook and cranny on these islands that had hitherto been visited by the "holluschickie" in peace was now daily searched out,—close up back of, and against the breeding rookeries, under every cliff wall by the sea, over to South-West Point, and to Otter Island, and even the little islet, Seevitchik Kamman, under the lee of the Reef was regularly hunted out.

Every three-year old, every four-year old and every well-grown two-year old male seal has been annually taken here during the last two years within a day or two at the latest after it showed up on the beaches, and in the rear of rookeries, prior to the 26th-31st, July.

In 1872 the killable seals were permitted to "haul up" in every sense of the word; they hauled out far inland from the sea; in 1890, the few killable seals that appeared never had time in which to "haul up" over the land,—they simply landed, and at the moment of landing were marked and hustled into a drive; up to the 20th of July last summer, from the day of their first general hauling as a body in June, this class of seals never had an opportunity to get wonted or accustomed to the land,—never were permitted to rest long enough to do so after landing.

Then page 118 he is describing the driving which had been previously spoken of in his old Census Report.

Such was the number and method of the young male seals in 1872-'74: it is very different to day: from the hour of the first driving of 1890, May 21st up to the close of the season, July 20th, all the driving was regularly made from rookery grounds—from the immediate margins of the breeding animals with the solitary exception of that one place, Middle Hill, English Bay, St. Pauls Island. Not a drive made elsewhere in the course of which cows and pups and bulls were not disturbed and hustled as the young males were secured.

I call attention to the fact of females being included in the drive with reference to some further evidence later on. Then follows on page 118 and 119 a passage as to the driving of cows on which I rely, but which is not very nice reading.

General FOSTER.—There is an omission there in the next sentence. "As long as the breeding season was unbroken"—the omission is, "was at its height, and the compact organization of the rookeries was."—

Sir RICHARD WEBSTER.—I am much obliged. Now look at the bottom of this page,

Last season, during that desperate effort made then to get the catch of 100,000, parties were regularly sent over to drive the holluschickie off from Seevitchie Kammen, from Otter Island.

That is not unimportant with reference to the effect on the habits of seals of this driving on the islands.

When I expressed my surprise at this ferocious driving begun early in June, I was met by apparent equal surprise on the part of the drivers, who wondering at my ignorance, assured me that they had been driving seals in this method ever since 1885.—"had been obliged to, or go without the seals"!

The driving itself, in so far as the conduct of the natives conducting the labor was concerned, was as carefully and well done as it could be; they avoided to the very best of their ability any undue urging or hastening of the drive overland from the rookeries; they avoided, as nearly as they could, under the circumstances sweeping up pods of cows and pups—did all that they could to make as little disturbance among the breeding animals as possible: but even with all their care and sincere reluctance to disturb the rookeries, cows were repeatedly taken up in their scraping drives on the margins of all the rookeries and their pups left floundering behind to starve and perish ultimately.

The manner to-day of driving overland to the killing grounds is unchanged from the methods of 1872, but the regular driving from every spot resorted to by the hol-

luschickie on both islands has caused the establishment of killing grounds and a salt house as early as 1879 at Stony Point (Tonkie Mees), and a slaughter field at Zapadnie on St. Paul the skins being taken from the latter point by a bidarrah to the village; (which was sent over from there every time a killing was made) and are now hauled down in wagons, (mule teams) from the former locality, to the salt houses of St. Paul.

Now these are facts stated, I admit, to Mr. Elliott on the information of the people in the islands that the change took place as early as 1879, and another change later on. If this was to be contradicted it ought to be contradicted categorically, and by people who knew. Then if you will turn to pages 146 and 147 and you will find some important percentages showing that which I enforced on the Tribunal on Friday last, the increasing proportion of small instead of the decreasing proportion of small, which would have been the consequence if pelagic sealing was at the root or had been the real cause of this mischief. Thus the bottom of 146.

Average percentage of seals "turned" out from the driven "pods" seasons of 1872-1874, including nothing but 7 to 12 lb skins taken from the start to the finish.

General FOSTER.—It is 1872 to 1874, inclusive.

Sir Richard WEBSTER.—Of course it is.

General FOSTER.—It is inclusive of years, not of pounds.

Sir Richard WEBSTER.—For this purpose it is not material. The point is they were taking from 7 to 12 pound skins, and not small ones.

From June 5th to the 15 inclusive, 5 per cent to 8 per cent of each driven herd. From June 15th to June 30th, 10 per cent to 12 per cent. From July 1st to the 15th 35 per cent to 40 per cent. From July 15th to July 20th, 60 per cent to 75 per cent.

Now the corresponding dates in 1890 were up to the 4th July only 7 to 12 pound skins were being taken; and then 5 pound skins. From June 5th, to the 15th 60 per cent to 70 per cent of each driven herd driven back. From June 15th, to June 30th, 70 to 85 per cent. From July 1st to July 15th, 85 per cent to 90 per cent. And then, even after the lowering of the standard from July 15th to July 20th, 90 per cent to 93 per cent turned back. Now these facts are spoken to by the man who had seen them and are, in my submission to this Tribunal, of more value than any number of opinions of people who had no previous experience and simply say what they think with regard to the effect of driving upon these animals. Then, if you will kindly turn to page 248, this is with regard to the rookery of Polavina on the 3rd July:

Visited this rookery ground and surveyed the area and position of the breeding animals in company with Mr. Goff.

My final survey of this rookery shows it to be one of the two rookeries only which seem to have suffered only half in loss of form and numbers. I can not avoid the conclusion, however, that this rookery like Zapadnie, has been cruelly driven during the last four or five seasons, perhaps the last eight years, since the chief hauling-grounds always laid up behind the breeding lines of Polavina; therefore, when the shrinking of holluschickie began, the scraping of the large semicircular edge of Polavina Rookery commenced in earnest, since the young males naturally do here as they do everywhere else on this island to-day, they lie up closer and closer to the lines of the breeding seals.

Then, beginning at paragraph 267 going on consecutively to 283, I press upon the Tribunal the importance of this evidence. There are tables of the actual counts of the numbers taken, the numbers killed and the numbers turned away day by day written down as they occurred in the presence of these very Government Agents, and that extends from the 23rd June up to the 26th July, the last date of an actual record; that is 25 days of actual observation—of course, not consecutively, but

when the drives have occurred, and the Tribunal will find, if they will be good enough to study those tables, corroboration which with great respect, my learned friends will not be able to dispute. I will call attention to my point as I pass on briefly. I will take page 273, 78 per cent rejected; that is the 27th June. Page 275, on the 28th June, 85 per cent turned away; page 276, on the 30th June, 84 per cent turned away (I leave out fractions); page 277, on the 1st July, 90 per cent rejected, or rather 85 per cent rejected, and 90 per cent of those were yearling pups; page 278, 88 1/2 per cent rejected on the 2nd July; page 279, 91 rejected on the 3rd July, and on the same day 81 per cent at another place. On the 4th July, page 281, 90 1/2 per cent rejected; on the 7th July, page 282, 92 per cent rejected. My learned friends will understand that I will read every one if they wish it, but it makes it clear that what was going on was that there had been a reckless slaughter of the holluschickie, perfectly independently whether or not there were sufficient male lives on the rookeries, in squeezing these unfortunate rookeries so as to get these 100,000 seals *per annum.*

Now at page 251 of this report occurs a passage which ought to be read. You will remember a man named Webster, whose conversation with regard to the size of the harems is quoted in the United States commissioner's report, but his affidavit is absolutely silent as I pointed out to you the other day with regard to the size of the harems subsequently but there is a statement on pages 250 and 251, the one I am referring to which seems to me to be of importance. It is under the date of 25th July.

Daniel Webster is the veteran white sealer on these islands; he came to St. Paul in 1868, and, save the season of 1876 (then on a trip to the Russian Seal Islands), he has been sealing here ever since, being in charge of the work at North East Point, annually, until this summer of 1890, when he has conducted the killing on St. George. He spoke very freely to me this afternoon while calling on me and said there is no use trying to build these rookeries up again so as to seal here as has been done since 1868, unless these animals are protected in the North Pacific Ocean as well as in Behring Sea; on this point the old man was very emphatic.

That is an important point as showing impartiality in this matter.

Webster came ashore on St. Paul island in the spring (April) of 1868, an employé of Williams and Havens, of New London, Ct. He took charge of the sealing then begun on behalf of this firm at Novastoshnah or North East Point. Hutchinson, Kohl and Co. had the only other party up there at that time. This was the first irregular sealing ever done upon this island since 1804.

Webster said that H. K. and Co. and he took over 75,000 young male seals at N. E. Point alone, that summer of 1868, and only stopped work from sheer exhaustion of their men, who were not only physically "used up," but also they had used up all their salt and had no suitable means left of saving any more skins.

When, then both parties stopped work he said that no apparent diminution of the number of holluschickie was evident to any of them; and that this fact created much comment; he declares that there has never been so many seals on that ground since that "although there was a fine showing of seal, Mr. Elliott, when you were there in 1872, yet there never has been so many there as in 1868."

He says that ever since 1876–'77 he has observed a steady shrinking of the hauling grounds at North East Point a very rapid contraction during the last six years, especially rapid since 1887–'88.

That he never agreed with the statement recently made of the great increase of seals over my record of 1872–'74; but on the contrary has always said that no increase ever followed it, and that he always said so to both Treasury and company agents whenever questioned he declared a steady diminution; he says that when down in San Francisco last (about 5 years ago, winter of 1885–'86) he was not asked any questions by anybody as to the increase of seals, and he volunteered no information; if he had been asked, he would have spoken his mind freely.

Webster says that in 1872–'74 he was then able to get all the holluschikie he wanted from that sand beach on the North shore of the "Neck" at N. E. Point never went anywhere else for them, or near a rookery.

Now would you kindly turn over to page 303. A conversation was held on the 6th August in the presence of all four Government Agents Murray, Nettleton, Goff the ordinary Agents and Mr. Elliott the special one. Colonel Murray took the notes and he is the Colonel Murray whose report I have read. I need not read though I commend to the notice of the Tribunal the whole of this conversation, but I turn to bottom of page 302. Where there is an answer by George Booterin one of the witnesses examined. Their names are given on page 300 and you will find it stated they are the men who had been longest on the island.

They are Artamonov, Booterin, Sedoolie, Vollkoy, Korchootin, Sedick.

I began to see in 1877 that this trouble was ahead, but whenever I or my people spoke about it we were told by the company men "Americans" (*sic*) that it was not of our business and we must not talk about it. Whenever we talked about the seals the company men threatened to send us away from the island.

Question. (By Mr. Goff to Booterin.) Was that the reason you would not talk to me last year?

Answer. I hardly remember now why I did not like to talk about the seals.

Question. What do you men think of the effect on seal life of the driving of the seals?

Answer. When the old Russian Company drove, and the drives came in here, they never killed anything over a three-year-old; all over that were either never disturbed, or else spared; and if the same thing had been practiced ever since, there would be no scarcity of seals to-day.

Question. How many three-year-olds do you think you can get next year?

Answer. If they were to drive all the seals on this island next year they would get nothing and would only disturb and injure the rookeries.

(By Kerick Booterin.) Whenever any killing is allowed, if they never kill any over three-year-olds, and kill only three-year-olds and under, I believe there would be no injury done.

Question. Do any of you remember the "Zapooska" of 1834?

"Zapooska" Mr. President means a rest given to the islands.

Answer. Yes, Booterin and Artamonov remember it well.

Question. How many seals were killed after the first year of that order, and how were they killed?

Answer. The first year we killed only one hundred holluschickie, and we increased the number every year afterwards.

Question. What do you think of another "Zapooska" for today?

Answer. (By Kerick Booterin.) When the Russians ordered their Zapooska, little by little afterwards, everything grew better, and if the same thing is repeated to-day, everything will grow better, and if it is not done, no seals will come here. We observed that the men sent here by the Government since old Capt. Bryant, till we saw you men and talk now with you, took no interest in the seals, but whenever busy, were engaged in shooting our hogs, in fact they very seldom visited the rookeries.

Question. Did you men ever talk or attempt to talk about seal life to any of the Government officers before Mr. Goff's time?

Answer. Yes, on several occasions, and they answered we did not know anything about it.

Then a little way down by Mr. Elliott

We propose to immediately inform the Secretary of the Treasury of the exact condition of affairs, and we know that he will take care of the seals and the people too. That he is the only man who can talk, but that he sent us here to get the facts, and he will act upon that information. That none of us in Washington knew of the true condition of affairs up here; until Mr. Goff wrote down last year to the Secretary of the Treasury not a word has ever gone from here since 1870 which even hinted at any danger to the seals.

Indicating that that had been occurring which may be better imagined than described. The Company Agents and the Treasury Agents prior to 1889 were not telling the Government the truth as to the condition of the Islands.

Now, Mr. President, on page 304, I will just read the summary with regard to this interview.

The foregoing statements are made only by those natives who in 1872–'74 were old enough then to really observe and think; these men above named are the only survivors of that age when I was on the island in 1872; also, when the above interview was in progress, Kerick Booterin during the whole time held a small note book in his hand, open, and not seeing him make any notes or refer to it at the close of the talk, he was asked by the interpreter what he wanted to do with the book that he had there; he then showed us the following written statement (in Russian) which he said he made for me, as he was not certain whether we should meet and talk, or not, before I left the island.

Then this is the statement August 6th:

Pardon me, Mr. Elliott, I never call myself a big man, but now I shall talk what I know, and will not tell what I do not know.

I think that as the hauling grounds were, they will be if the drives were made and the killing made from small ones, the large ones spared. If that is done, I think all will be well. If that is not done, more harm will come to the rookeries so that there will be no more hauling out on the rookeries. If a "Zapooska" is not made, then we will lose the land if the Treasury does not look out. If the hauling-grounds could sustain the company, then the grass and everything like it would not grow there now. This loss will fall upon us and upon our children. We cannot longer sit quiet and talk about there being lots of seals.

I speak to every member of this Tribunal, and I say to suggest that that report is not the report of truth not by direct attack but by casting suspicion upon it as was done by Mr. Carter in his original argument is unworthy; I was about to justify Mr. Elliott's position when my offer drew from Mr. Phelps the frank acknowledgment he did not intend to attack Mr. Elliott except by criticism of his report, which he is at perfect liberty to do—I say, if you look at that report and apply to it your experience and knowledge of life, you cannot but come to one conclusion; and that is that in 1889 the impartial Treasury Agent, Mr. Goff, who is still in the service of the Government, Colonel Murray, Mr. Nettleton, and Mr. Lavender, as well as Mr. Elliott, came to the conclusion the bulls had been practically exterminated from this island for some years before.

Now the evidence in rebuttal of this from Mr. Stanley Brown is rather curious, and I read from the second volume of the United States Appendix, at page 18, under the head of redriving:

From my knowledge of the vitality of seals I do not believe any injury ever occurred to the reproductive powers of the male seals from redriving that would retard the increase of the herd, and that the driving of 1890 necessary to secure about 22,000 skins could not have caused nor played any important part in the decrease that was apparent on every hand last year.

Now that affidavit was made after a few months' or rather a few week's examination, of the rookeries by Mr. Stanley Brown. It is not saying too much to ask this Tribunal not to regard such testimony, in the face of the body of evidence to which I have been calling attention this morning, as well as that to which I called attention on Friday last. But is it true that female seals have been appearing in the catch from the islands to a much greater extent than they ought to have? I will ask attention on this point to the British commissioners' Report, paragraphs 716 to 719, and again I do not hesitate to appeal to the careful way in which these gentlemen formed their opinions, and to the way in which they have been corroborated by the subsequent testimony, paragraph 716.

As already indicated, all the evils incident to "driving" in any form became greatly intensified when, with a diminished number of killable seals, the attempt is still continued to obtain a large yearly number of skins. This occurs not only because

of the driving and redriving above referred to, but also in consequence of the fact, that under such circumstances the remaining killables lie very close to the breeding rookeries, so that it is no longer possible to make drives without disturbing the rookeries themselves. Thus, it has occurred that, in late years, considerable and increasing numbers of breeding females have been driven to the killing grounds with the killables, though when recognized there in the process of selecting for killing, they have been released. The probable special effect of such treatment of females, as well as the fact that in the disturbances caused upon the breeding rookeries, a certain number of the young are almost certain to be killed, have been already noted.

Then in paragraph 717 is the extract from the original Census Report, and in paragraph 718 is Captain Bryant's testimony with regard to the possible inclusion of females for killing among these driven. But if the Tribunal will be good enough to take the second volume of the Appendix to the British Counter Case at page 245, I will read the evidence of six or seven of the fur merchants in the very affidavits referred to by my learned friend, Mr. Coudert. This is at paragraph 5—Mr. Stamp.

A noticeable feature about the consignments from the Pribilof Islands has been that, while formerly the consignments were entirely composed of male skins, of late years from 1883 up to 1890 female skins have appeared among them each year in increasing numbers.

Now the question may arise as to whether or not you can tell sex very accurately, but in making this affidavit Mr. Stamp could not have had in his mind that there would be anything important in the particular dates he mentioned; and he puts 1883, a date some seven years back, which would corroborate the statement I have been making this morning as to the date the driving close to the rookeries actually began.

The PRESIDENT.—It does not appear that this testimony should relate to seals killed on the islands.

Sir RICHARD WEBSTER.—Yes.

The PRESIDENT.—You think it does not mean the Pribilof herd altogether.

Sir RICHARD WEBSTER.—No that is not contended. These affidavits have been referred to before. I do not wonder, after the lapse of time it should, have escaped even your memory, Sir, that the skins from the Pribilof Islands are distinguished from the north-west catch all through by fur merchants. You will find I am accurate in that respect. Then at page 246 paragraph 6:

In inspecting consignments of Alaska skins in recent years, I have from time to time noticed that the number of female skins had very much increased, and in the last few years in which the 100,000 skins were taken, I personally noticed a very considerable percentage of female skins. Female skins began to make their appearance about 1883 in this catch, and have increased in numbers each year since reaching, as I have said, a very considerable percentage in 1889.

Then the next paragraph shows what I had in my mind with reference to the others.

In examining the consignments of the north-west catch, I have always noticed, and during the past two years especially, an increasing number of skins which showed neither spear nor shot marks, and which appear to be identical with Alaska.

He is speaking of the sea catch as the north-west catch, and so they all do.

Then Mr. Rice at page 246, paragraph 3, says:

Up to 1878 I never remember having seen among the Alaska catch any female skins. In that year for the first time I noticed the appearance of a few female skins, which I at once drew to the attention of the firm. In the following year there were also a few of these skins, but what percentage, or what number, I cannot at this distance of time recall. Since that period I have always noticed amongst the Alaska catch a certain percentage of skins which were female, and which percentage has slowly increased, and amounted to, in my opinion (at a rough guess) in 1889 to from 10 to 15 per cent.

These are the same gentlemen who refer to there being 70 or 80 per cent of the female skins in the sea-catch—the same gentlemen whose affidavits are relied upon by my learned friend, properly enough, for that purpose.

Then Mr. Vyse at page 248 paragraph 3.

As regards the Alaska catch, in former years this was entirely composed of male skins, but latterly I have noticed amongst them a certain percentage of female skins, which have increased a little in more recent years. It is very difficult to form anything like an accurate estimate of what this percentage is. In my opinion, it is about 10 per cent.

Then Mr. Bevington, page 249, paragraph 3.

As regards the Alaska catch, I have during the last four or five years noticed amongst them a small quantity—say from 10 to 15 per cent.—of female skins.

Then Mr. Allhausen on the same page, paragraph 3, says:

There is another feature in relation to the Alaska skins, viz., that they, for the most part, are entirely composed of male-skins. Of late years, that is to say, from the year 1883 or 1884, I have noticed amongst this consignment a certain percentage of female skins, which percentage has increased in later years.

Sir, it is corroboration, and corroboration not of an unimportant kind, though, of course, not quantitative, showing what you would expect was happening if males were becoming scarce and if they continued to take more of the twoyear olds and more of the one-year olds, and they were obliged to drive closer to the rookeries and so did include some females who were disturbed from the rookeries.

Now, passing as rapidly as I can over one or two remaining matters, I want to tell you the class of evidence which you have to consider. Will you kindly take map 7 of the United States Case.

The PRESIDENT.—That is the East Point Rookery Map.

Sir RICHARD WEBSTER.—That is the East Point Rookery Map. I desire to call attention to the class of evidence by which the case I have been making is sought to be met. I call attention therefore to n° 7 of the maps annexed to the United States Case, the map of East Point Rookery. I only take this one, without going through them all, because it best illustrates what I mean, and I think the Tribunal will be surprised when I tell them how this has been prepared. The thick red colour is a survey by Mr. Stanley Brown of the breeding ground in the year 1891. The continuous red line, as appears from the colour is supposed to be the condition of the rookery in 1882, and the broken red line is supposed to be the condition of the rookery in 1870; that is to say, this map is supposed to show that it had gone from the dotted line up to the thick line between 1870 and 1882, and had shrunk from the thick red line of the hatched colour, as it is called, by the year 1891.

If any maps or records had been kept in the Islands possibly I say there might have been some value about it but it is somewhat astonishing when I tell you that these marks particularly the thick line and the dotted line have been put down by people, two of whom have been absent 14 or 15 years from the islands, from memory not going even upon the islands again—made either in San Francisco or in some other place where they were without a note or memorandum of any sort or kind. I ask you to look at that part by the Sea Lion Point, look at the lines opposite side of the Islands. Look at the way in which minute curves are supposed to be drawn from memory and all I say is that that class of testimony may be of some value to show general increase or general decrease but can be of no value in order to form an estimate as to whether or not the condition of the Islands is due to the killing of females as distinguished from the killing of males. I give my learned

friends simply the references in each case to the affidavits where they will find my statement supported, that these lines have been drawn by people who have been absent in all but one case 10, 12, or more years from the Island and from memory without notes. It is the United States Case, Appendix n° 2, pages 3, 44, 60 and 167. Those are the affidavits of the gentlemen, Mr. Morgan, Mr. McIntyre, Captain Bryant and Mr. Stanley Brown, Mr. Stanley Brown, of course, being responsible only for the plotting of what he saw in the year 1891.

Senator MORGAN.—Did Mr. Stanley Brown's report have no reference to Mr. Elliott's previous surveys?

Sir RICHARD WEBSTER.—None whatever, Mr. Senator; it was made entirely upon his own surveys; in fact, it does not appear from any reference in Mr. Stanley Brown's affidavit, so far as direct reference is concerned,—you cannot tell if he had it or not.

Senator MORGAN.—Mr. Elliott surveyed the same rookeries?

Sir RICHARD WEBSTER.—Mr. Elliott surveyed the same grounds; but no reference is made anywhere to Mr. Elliott's Report as I said the other day by Mr. Stanley Brown.

Now, Mr. President, I was challenged the other day with regard to the Russian figures of killing. I know now they will not dispute the figures, but they say that we made an improper use of them. My point is that prior to 1867 and 1868 no experience of the Islands would have justified a killing of anything like 100,000. May I remind you for a moment of how the matter stands? We say that the average of the figures given on page 132 of the British Commissioners' Report, showing the killing prior to 1868, shows an average of less than 40,000 a year. They do not now dispute the authenticity of the figures so far as they appear, of course, a few years were only estimates, but all the figures come from United States sources. But what they say is, that you, the British Commissioners, have behaved very unfairly and very improperly in estimating the figures at something less than 40,000 and your case is an unfair case, because you have made that statement. I desire to tell the Tribunal that in the United States Executive Documents, N° 36 of the 41st session, Mr. McIntyre, the witness referred to many times by the United States reporting to Mr. Blaine in the year 1869, or rather reporting to Mr. Boutwell, the Secretary of the Treasury, and Mr. Boutwell sending it on to Mr. Blaine who was then the speaker of the House of Representatives,—it is on page 15,—uses this language with regard to the Russian killing, which, at any rate, show that the British Commissioners were not less accurate than Mr. McIntyre, in fact they have been more liberal.

From the same authority (that appears to be Vemianodoff), we learn that during the first few years following the discovery of the Islands in 1781 over 100,000 skins were annually obtained; but this it seems was too large a number, for the decrease in the yearly return was constant until 1842, when they became nearly extinct; and in the next decade the whole number secured was 129,178, being in 1852 but 6,564. But from 1852 under judicious management, there appears to have been an increase, and, in 1858, 31,810 were taken which was the largest catch in any one year until 1867, when, as I am informed, some 80,000 or 100,000 were secured under the supposition that the territory would soon be transferred to the United States.

Now that was the statement made perfectly impartially in 1869 by Mr. McIntyre that the largest annual catch in any year from 1842 down to 1869 had been between 31,000 and 32,000.

Lord HANNEN.—That is not in accordance with all these figures because some are larger.

Sir RICHARD WEBSTER.—In the year 1865—Yes—That is the first that I see.

Lord HANNEN.—There is some in 1859.

Sir RICHARD WEBSTER.—It is just 32,000.

Lord HANNEN.—And in 1865 it is 40,000 odd.

Sir RICHARD WEBSTER.—But your Lordship will notice that those years 1863, 1864 and 1865 have a query against them. I quote this not for the purpose of saying one is as true as the other, but for the purpose of showing the conclusion drawn with regard to the figures by independent persons advising the United States many years ago was in accordance with the independent judgment, made by the British Commissioners, and, yet it is in the face of this, that a grave attack is made by the United States on the unfairness of the British Commissioners, because they thought fit to say that the average of those years did not exceed 40,000 seals *per annum* on an average of years.

Now, Mr. President, attention was called by my learned friend Mr. Carter, or Mr. Coudert, to one or other of the replies from Naturalists. I think, Mr. Coudert read professor Huxley if I remember and I want the Tribunal exactly to understand how that matter rests.

Will you be good enough to oblige me by taking the first Volume of the United States Appendix.

Senator MORGAN.—May I enquire, Sir Richard, whether there is evidence in this case to show that during the time of the rest which the Russians gave to these Islands that they provided that sealing might go on on one island while the other was entirely exempt.

Sir RICHARD WEBSTER.—I do not know Mr. Senator Morgan, but I think it is quite possible and a very reasonable suggestion. I do not know how it stands. I do not remember it.

Senator MORGAN.—I only called attention to it to have it looked into.

Sir RICHARD WEBSTER.—It strangely accords with a note that I have of an observation that I intended to make to this Tribunal as to what might be reasonable with regard to these Islands, but I mention this that I do not really know whether the "Zapooska" was sometimes at St. George's sometimes at St. Paul's or how it is.

Now I want respectfully to caution the Tribunal on this, because it is clear that these replies of the naturalists must be at any rate considered with some little caution though many of them are not against me at all having regard to the way in which their opinion was invited. Would you kindly look at page 415. A statement occurs there, by Mr. Merriam, of supposed facts, upon which the expert gentlemen are asked to express an opinion, and, it is not going too far to say, that in many of these most important facts there was a serious controversy of fact known to exist at that time. Therefore one must to a certain extent regard the report and opinion, however distinguished the author of it may be, with some little caution, having regard to the nature of the memoranda which was put before them.

I will only call attention to the most important matters, and I will take them, if you will bear with me, by the numbers. In paragraph 8—I indicate those which cannot be taken as facts:

> The act of nursing is performed on land, never in the water. It is necessary, therefore, for the cows to remain at the islands until the young are weaned, which is when they are 4 or 5 months old.

Now there is not a passage in the evidence which justifies that statement, that as a matter of fact, the pups are weaned before they are four or five months old. The evidence on both sides shows that in the end of July and beginning of August the pups are scattered all along the islands and apparently weaning, in the ordinary sense of the word, has taken place long before that.

Senator MORGAN.—I believe it is true that the female seal, Sir Richard, never nourishes her young in the water.

Sir RICHARD WEBSTER.—Certainly, but that is not my point. My criticism is with reference to the statement that it is necessary for the cows to remain on the land until the young are weaned which is when they are four or five months old. I addressed the Tribunal last Wednesday or Thursday on the matter and for reasons which I gave, I contended that apparently the period of actual nursing by the mother seal before the pup becomes to a certain extent independent cannot be put at the outside at more than five or six weeks.

Senator MORGAN.—My question only related, you know, to the fact that whatever nursing there was and whatever time was occupied was necessarily on land.

Sir RICHARD WEBSTER.—And I never contradicted that.

Senator MORGAN.—I was not aware Sir Richard, that you had or that I said you had.

Sir RICHARD WEBSTER.—I will deal with anything I can, of course, but it does not really bear upon my point. My point of attack is the statement that they are not weaned till they are four or five months old. I say that that is not accurate. Then at the beginning of paragraph 10 copulation takes place only on land. I say that that is not accurate. Then 14:

Cows when nursing, and the non-breeding seals, regularly travel long distances to feed. They are commonly found 100 or 150 miles from the islands and sometimes at greater distances.

It is not too much to say that that is, at any rate, a very disputed point. Here, it has been treated as an ascertained fact.

Then 17:

The nonbreeding male seals ("holluschickie"), together with a few old bulls, remain until January, and in rare instances even until February.

That, again, as a statement of fact, cannot be supported.

Then 18:

The fur-seal as a species is present at the Pribilof Islands eight or nine months of the year, or from two-thirds to three-fourths of the time, and in mild winters sometimes during the entire year.

The breeding bulls arrive earliest and remain continuously on the islands about four months; the breeding cows remain about six months, and the non-breeding male seals about eight or nine months, and sometimes during the entire year.

I think that is a grossly exaggerated—I will not say more than that—.

Then 20:

In addition to the commercial killing above described, a number of male pups were formerly killed each year to furnish food for the natives, but the killing of pups is now prohibited by the Government.

When I remember that this report was written in 1892, and that the killing of pups continued under protest, up till the year 1890, I think the fact had perhaps better have been more distinctly stated.

Then at the top of page 417—(I am only calling attention to the most pointed ones)—You will see this:

Inasmuch as the number of seals annually secured by pelagic sealing represents but a fraction of the total number killed, a glance at the above figures is enough to show that the destruction of seal life thus produced is alone sufficient to explain the present depleted condition of the rookeries.

Mr. President, I cannot but wonder whether, when this was written Mr. Merriam had or had not been allowed the privilege of seeing Mr. Elliott's Report? Those words obviously mean but a very small frac-

tion. Of course, if it was 90 per cent, 95 per cent, or even 75 per cent, there would be no object in putting it in—it would have conveyed to the mind of an ordinary reader that a very small fraction indeed of the seals that were shot at were recovered.

Then at the end of the 4th paragraph on page 417, you will see this:

It is evident that this killing of nonbreeding males could in no way affect the size or annual product of the breeding rookeries unless the number killed was so great that enough males were not left to mature for breeding purposes. There is no evidence that this has ever been the case.

I do not know now whether Mr. Merriam had seen Goff's Report, the Treasury Agent Lavender's Report, Murray's Report which is in the year 1890 and 1889, stating that 1889 he, Lavender, could not find enough breeding males upon the rookeries that there was none left. It is a most distinct statement. It may be right or wrong—that I submit to the judgment of the Tribunal, but, to say the least, it is rather strong for Merriam to state if he knew of this report that—there is no evidence of there being any loss by virile males.

Then further down he says:

Having been selected by my Government solely as a naturalist, and having investigated the facts and arrived at the above conclusions and recommendations from the standpoint of a naturalist, I desire to know if you agree or differ with me in considering these conclusions and recommendations justified and necessitated by the facts in the case.

I am not at all surprised, Mr. President, that gentlemen replying to that *ex parte* letter and taking those statements to be facts, you find some of their Reports more unfavorable to my contention than you would perhaps have had, if a more accurate statement of the real condition of the evidence had been put before them. But even then there are certain matters which I think should be referred to. I call attention to the letter of Mr. A. Milne-Edwards, who is "Le directeur du muséum d'histoire naturelle", in Paris. At page 419, in the end of the second paragraph he says:

We know that our migratory birds are, during their travels, exposed to a real war of extermination, and an ornithological international commission has already examined, not unprofitably all the questions relating to their preservation.

Would it not be possible to put fur-seals under the protection of the navy of civilized nations.

And then on page 419 he says:

There is, then, every reason to turn to account the very complete information which we possess on the conditions of fur-seal life in order to prevent their annihilation, and an international Commission can alone determine the rules, from which the fishermen should not depart.

Therefore he, with prudence and caution is not prepared to endorse the statement suggested by Mr. Merriam that nothing but the absolute prohibition of pelagic sealing is to be the remedy.

Then I come to the letter of the gentleman who writes from Christiania, Mr. Collett. I am only of course taking those from which I say evidence in my favour can be obtained. At page 421 he says:

My own countrymen are killing every year many thousands of seals and *cystophorœ* on the ice barrier between Spitzbergen and Greenland, but never females with young; neither are the old ones caught, or and that is the greatest number, the young seals. But there is a close time, accepted by the different nations, just to prohibit the killing of the females with young.

That is not in favour of complete prohibition of pelagic sealing.

I next read an extract from a letter from Dr. G. Hartland of Bremen which will be found on page 422, in which he says:

I sincerely regret that for practical reasons it cannot be thought of to prohibit fur-seal hunting for a few years entirely, as this would naturally assist numerically the menaced animal.

Applying both to land and sea. Then Professor Salvadori from Turin says on page 423:

No doubt the free pelagic sealing is a cause, which will act to the destruction of the seal herds, and to that it must be put a stop as soon as possible.

But at the same time, I think that the yearly killing of about 100,000 young males on the Pribilof Islands must have some influence on the diminutions of the herds, especially preventing the natural or sexual selection of the stronger males, which would follow, if the young males were not killed in such a great number. So that, with the stopping of the pelagic sealing I think that, at least for a few years, also the slaughter of so many young males in the Pribilof Islands should be prohibited.

That is a very remarkable thing showing that his judgment, even in the face of the statement made that there was no evidence that there had not been a sufficient number of males left, in Mr. Merriam's letter.

Then Dr. Blanchard who writes from Paris, says, in the third paragraph of his letter at page 427:

I will go even further than you, for I think it urgent not only to rigidly prohibit the taking of the migratory Callorhinus in the open sea, but also to regulate and limit severely the hunting on land of males still too young to have a harem.

According to your own observations the male does not pair off before the age of 6 or 7 years and the female gives birth to only one pup at a time. It can be said, then, that the species increases slowly and multiplies with difficulty. These are unfavorable conditions, which do not allow it to repair the hecatombs which for several years past have been and are decimating the species.

That points quite as much to the regulating and dealing with the matter upon the islands as at sea.

I next read from the letter from the two gentlemen at Stockholm, at the bottom of page 428. After saying that the facts stated would form a base for regulations, they say:

These regulations may be divided into two categories, viz—1mo.—Regulations for the killing, etc., of the Fur-Seals on the rookeries in order to prevent the gradual diminution of the stock; 2do.—Regulations for the Pelagic Sealing or for the hunting of the Seals swimming in the ocean in large herds to and from the rookeries, or around the rookeries during the time when the females are suckling the pups on land.

Obviously a very just and proper recommendation. Now I know there are some others who accept "wholesale", (if may use the expression), Mr. Merriam's recommendation to condemn pelagic sealing and pelagic sealing only. It is not doing too much to call your attention to the character of the letter addressed to them by Mr. Merriam, and, notwithstanding that, to the very important—statements and opinions given in reply by some, of those distinguished naturalists.

Mr. President, it is said that pelagic sealing is the only cause that has injured this race of seals. It is utterly impossible for my friends even to prove it, I say it is utterly impossible for my friends even to go near establishing any proof of it. I care not what figures are taken. I will take the whole pelagic sealing up to any date you like to give. The year they take is 1884, contrary to the facts found by the original investigation of these matters by either Mr. Goff, Mr. Elliott, Mr. Murray, or anybody else—for the purposes of their case to day they say in 1884 a decrease observed. Why, Sir, if you took the whole pelagic sealing up to 1884, and if you assumed that every one of the seals killed to bear a pup, and if you assumed all those pups to live, it could not have had anything like influence upon the year 1884 as suggested. But, of course, that would be grossly unfair to pelagic sealing, because the case made by the United States is that only one-half of the seals that are born are males—that is to say, one-half are males and one half females; and only one half of those males return as yearlings—that is to say one quarter of the total number—and still less as two year olds.

And when I remind you—taking it not from any Table that is disputed, but from the total pelagic catch—the north-west catch, in and out side Behring Sea—the numbers in 1879 are 11,090; in 1880, 15,227; and in 1881, 11,655—if you apply even the tests of the United States Commissioners to that, the reduction in the year 1884 in two and three-year-olds, could not amount to more than between 4,000 and 5,000 seals if every one of the females produced a pup.

Mr. CARTER.—How many do you say?

Sir RICHARD WEBSTER.—I give the figures they are in the Table page 257 of volume II, of the Appendix to the Counter Case of the total Pelagic Catch. In 1879 it is 11,090; in 1880 15,227; in 1881, 11,655.

Mr. CARTER.—I mean your statement of what it would amount to?

Sir RICHARD WEBSTER.—I say, if you assume all to be females, and merely apply the death-rate from the United States table, the utmost deficiency there could be of two and three-year-old's in the year 1884 would be between 5,000 and 6,000 seals.

But now, Mr. President, will you let me remind you what the condition of things is with regard to pelagic sealing. It is very well put, Sir, at page 211 of the British Counter Case and the references are given to the detail information about it in the Commissioners Report.

In the Case of the United States, it is claimed that this took place concurrently with increased sealing in Behring Sea and in consequence of the death of suckling female seals. But in 1884 only one Canadian sealing-schooner is known to have entered Behring Sea.

The first ship to enter was in 1883, the "San Diego", an American ship.

But in 1884 only one Canadian sealing-schooner is known to have entered Behring Sea, and in 1885 but two schooners, and it was not till 1886 that as many as sixteen vessels entered the sea.

Now the case made with regard to the killing and deterioration of the holluschickie or the males is due to the fact it is said of the nursing mothers being killed in Behring Sea. Now I need not do more than put my point before the Tribunal to show the impossibility of sealing to that extent inside Behring Sea, up to the year 1886, having had any sensible effect on the rookeries at all the answer is whatever may have been the diminution of general seal life unquestionably pelagic sealing played its part, and I have not for one moment suggested the contrary but you must look to some other cause to find the very large decrease and, looking for some other cause, you find it in the evidence to which I have called your attention.

Now with reference to the fact that in the years 1891 and 1892 that there is no dimunition of the number of seals found at sea, you will find at page 29 of the Second volume of the Appendix to the British Counter Case, the Summary of the evidence of 132 witnesses as to the seals being as numerous at sea in the years 1891 and 1892, that so far as you can gather from that testimony there has been no corresponding decrease in the seals at sea, confirming another matter upon which the Commissioners and others have expressed an opinion that the effect of this treatment upon the islands may be to drive a considerable number of the seals to the sea. I was asked by Senator Morgan whether there was any evidence at all of these animals suffering from disease? I expressed an opinion or rather I remarked that any race of animals would indeed be extraordinary which was entirely free from disease to which, as far as we know certainly all animals that have ever come under our notice are subjected.

Senator MORGAN.—I assume they must be necessarily the subject of disease.

Sir RICHARD WEBSTER.—But there is very remarkable evidence about it. I ought to have been able to answer it off hand, but I turn to that which contains more knowledge and truth about Seal life than anything else, and that is to the Report of the British Commissioners I call attention to paragraph 339 of the British Commissioners Report:

It can scarcely be doubted that the fur-seal of the North Pacific is also subject to diseases of various kinds, the prevalence or otherwise of which have their effects on the numbers at each particular period. Inquiries made on the subject have, however, not brought to light any notable mortality which has been attributed to disease, nor do previously published reports include any mention of such mortality. It may thus at least be inferred that no notably fatal disease has attacked these animals while upon their breeding islands within historic times, but it is not safe to affirm that disease has been wanting, or that epidemic diseases may not, at any given time, appear, and require to be allowed for in any regulations made respecting the killing of seals.

In the Report of Mr. C. H. Jackson on the fur seal islands of Cape Colony, already referred to, he writes: "Upon several islands, especially in the Ishabar group, are to be found the remains of vast numbers of 'seal', probably the effects of an epidemic disease at some distant period".

On the same subject and referring to the same region, Mr. H. A. Clark writes as follows, quoting "Morell's Voyages": "In 1828 Captain Morell, in the schooner 'Antartic', visited the west coast of Africa on a fur-seal voyage. At Possession Island, in latitude 26° 51′ south, he found evidence of a pestilence among the fur-seals. The whole island, which is about 3 miles long, he states, was covered with the carcasses of fur-seals, with their skins still on them. They appeared to have been dead about five years, and it was evident that they had all met their fate about the same period. I should judge, from the immense multitude of bones and carcases, that not less than half-a-million had perished here at once, and that they had fallen victims to some mysterious disease or plague." About 17 miles north of Possession Island are two small islands not over a mile in length, where Captain Morell found still further evidence of a plague among the fur-seals. "These two islands," he says, "have once been the resort of immense numbers of fur-seals, which were doubtless destroyed by the same plague which made such a devastation among them on Possession Island, as their remains exhibited the same appearance in both cases".

Elliott, after stating that he has observed no disease among the seals of the Pribilof Islands, quotes a recorded instance of a plague affecting the hair seals of the north of Scotland, Orkney and Shetland Islands, and adds: "It is not reasonable to suppose that the Pribilof rookeries have never suffered from distempers in the past, or are not to in the future, simply because no occasion seems to have arisen during the comparatively brief period of their human domination".

At page 62 of the Census Report. I happen to know the place mentioned very well indeed, and some-thing about the seals, too—speaking of the hair seal, Mr. Elliott puts this in his note:

The thought of what a deadly epidemic would effect among these vast congregations of Pinnipedia was one that was constantly in my mind when on the ground and among them. I have found in the British Annals (Fleming's) on page 17 an extract from the Notes of Dr. Trail: "In 1833 I inquired for my old acquaintances, the seals of the Hole of Papa Westray, and was informed that about four years before they had totally deserted the islands and had only within the last few months begun to reappear... About fifty years ago multitudes of their carcasses were cast ashore in every bay in the north of Scotland, Orkney and Shetland, and numbers were found at sea in a sickly state."

I cannot help thinking that with an enfeebled race for the reasons which I have been referring to, and with the want of supply of sufficient virile males such a condition of things is not less likely in the future than it has been in the past.

Mr. President, on many of the matters upon which I have addressd you, there is interesting information to be found in connection with the photographs which are before the court; but of course I do not want to stop to occupy time by those being examined, as the Tribunal can ask for information upon them if they desire anything further in that connection.

The PRESIDENT.—May I beg to put a question to you, Sir Richard, in regard to the statement you made a few minutes ago.

Sir RICHARD WEBSTER.—Which is that?

The PRESIDENT.—The statement with regard to the abundance of fur-seals at sea. You say that the driving and ill-treatment of the seals on the islands may have driven a great quantity of seals to the sea.

Sir RICHARD WEBSTER.—Possibly.

The PRESIDENT.—Do you mean to say they would resort to any land during the time they were at sea?

Sir RICHARD WEBSTER.—Oh no; I think there would be more found at sea. Of course I do not want to reargue the question. My contention is that except for the purpose of reproduction, as with the bulls, there is no evidence of the absolute necessity of going to land at all, that a large number of the holluschickie do go, possibly by gregarious habits, and possibly for other reasons; but that I suggested to you that it is not a vital necessity except in the cases to which I have referred.

The PRESIDENT. You admit, then, that they must go for those few purposes.

Sir RICHARD WEBSTER.—Certainly. It seems to me fair upon the evidence to point out that in all probability a less number of these animals would be likely to be found on the islands, and a larger number at sea if there was the amount of disturbance on the islands to which attention has been called; but of course, Sir, that they would go back again in large numbers is equally plain when the disturbing element was removed.

I was asked to hand in and before I conclude I propose to hand in the paper of regulations. These, Sir, are the regulations which I, in conjunction with my learned friend the Attorney General and my other learned friends, submit to the Tribunal as the regulations which upon the evidence, ought to be laid down by this Tribunal, assuming there be proper management upon the islands; and I can only repeat that which he put before you, Sir: these have not been framed as a bid in order that they may be the subject of further expansion. They have not been framed from our point of view of considering what is the least we would offer, thinking the Tribunal ought to order more. Rightly or wrongly, these have been framed with the intention of putting before the Tribunal what would appear to be fair regulations, having regard to the evidence as to the seals that ought to be protected in Behring Sea, by which I mean the gravid females passing from through the Aleutian Passes to the Pribilof Islands and the females in immediate attendance upon the islands nursing their young. They are as follows:

REGULATIONS.

1. All vessels engaging in pelagic sealing shall be required to obtain licences at one or other of the following ports:
   Victoria, in the province of British Columbia.
   Vancouver, in the province of British Columbia.
   Port Townsend, in Washington Territory in the United States.
   San Francisco, in the State of California in the United States.
2. Such licences shall only be granted to sailing vessels.
3. A zone of twenty miles around the Pribilof Islands shall be established, within which no seal hunting shall be permitted at any time.

I do not propose to reargue, Mr. President, that that means a very much larger zone in reality, because of the absolute necessity of observing the zone.

Senator MORGAN.—You mean, sir Richard, that it shall be established by law in both countries?

Sir RICHARD WEBSTER.—Certainly.

4. A close season from the 15th of September to the 1st of July, shall be established, during which no pelagic sealing shall be permitted in Behring Sea.
5. No rifles or nets shall be used in pelagic sealing.
6. All sealing vessels shall be required to carry a distinguishing flag.
7. The Masters in charge of sealing vessels shall keep accurate logs as to the times and places of sealing, the number and sex of the seals captured, and shall enter an abstract thereof in their official logs.

Probably some members of the Tribunal may not know the distinction between a "Log" and an "Official Log". The official log is that which the Master is bound to enter up and deposit at certain places at the end of every voyage; the daily log is only accessible if you can get access to the ship. The official log is a public document, and must be deposited under penalty. It is in order to insure that the information may be accessible that it is proposed to enforce entries in the official log.

8. Licences shall be subject to forfeiture for breach of above regulations.

Senator MORGAN.—All these eight propositions, as I understand it, are based upon the assumption that the two Governments, or the Governments respectively, shall enact laws to that effect?

Sir RICHARD WEBSTER.—Certainly.

Lord HANNEN.—And I suppose it is for that reason that you do not go into the question of how these are to be enforced?

Sir RICHARD WEBSTER.—It is for that reason, my Lord. I suggest that what I may call the proper determination of this Tribunal would be a determination of the regulations which ought to be made; from the point of view of the necessity of preserving seal life and that it would not be proper for this Tribunal, or just to the United States or Great Britain, to dictate in what form the local municipal legislation of the two countries should be to enforce the observance of the regulations, or what should be the amount of the penalty or the degree of punishment. As regards clause eight we thought that it would not be right that where there had been a breach of the regulations the license should continue as though no such breach had taken place; but with regard to the form of municipal legislation, I have conceived that the actual machinery whereby the United States and Great Britain respectively would legislate in order to carry out and enforce the regulations, is a matter which should be left entirely to them.

Senator MORGAN.—Sir Richard, if you please, nº 3 reads, "A zone of twenty miles around the Pribilof Islands shall be established, within which no seal hunting shall be permitted at any time." The distance between the islands of St. Paul and St. George is about 27 miles.

Sir RICHARD WEBSTER.—Thirty-six.

Senator MORGAN.—If you say "around the Pribilof Islands", I do not know where the centre of that zone would be.

Sir RICHARD WEBSTER.—The regulation means from the nearest land, Sir. That is the proper expression. "Around the Pribilof Islands" like the selvage, or border. It is 20 miles from the nearest land, and there would be no right to go between the two islands.

Lord HANNEN.—You might express it, then, as within twenty miles of any land.

Sir RICHARD WEBSTER.—Within twenty miles of the nearest point of land. It practically is extending the three mile limit for the purposes of this case by convention; because, Mr. President, as you observe, these regulations which are being suggested, to be determined by the Tribunal as though by agreement between the two nations; failing agreement between the two nations, they are being established

by this Tribunal. And upon the point which I think Lord Hannen and Senator Morgan directed my attention to, it is not to be supposed, for reasons that I will say a word about in a moment, that two nations agreeing with each other, would consent to delegate to the other nation the form of determination as to what shall be the legislation which the particular nation would itself lay down. To point my observation: the United States would never consent to Great Britain dictating to the United States what would be the form of the United States legislation.

Lord HANNEN.—The regulations cannot be carried out in either country without legislation.

Sir RICHARD WEBSTER.—In neither country could the rights of nationals upon the high seas be interfered with except by municipal legislation.

Senator MORGAN.—And therefore there has to be in both governments legislation that is as nearly parallel as it can be made.

Sir RICHARD WEBSTER.—Subject only to the good feeling and good faith on the part of the Government making the legislation, that the act or statute shall be effective for the purposes for which it is intended.

Senator MORGAN.—Then I understand that if we should adopt regulations, with such amendments as you have proposed to them, that these regulations would have no sanction for their enforcement except the fact that this award would make them a part of the treaty obligation between the two Governments.

Sir RICHARD WEBSTER.—I consider, Sir, it would be just as though the two nations had agreed upon regulations and then there would be a moral obligation upon each country to give effect to that agreement, and that moral obligation would have as much effect, of course and be as much respected, as if it were a legal obligation.

Senator MORGAN.—And in the case you suggest, of either government failing to carry into effect by law regulations that were satisfactory to the other.

Sir RICHARD WEBSTER.—I have not suggested that.

Senator MORGAN.—I am suggesting it—or any regulations at all, then the remedy of the other Government would be only to hold that the Government failing to carry them into effect had not complied with its treaty obligations.

Sir RICHARD WEBSTER.—I should think so. There was one regulation that we did not think it right or proper, Mr. President, to insert, because it seemed to me it ought to come essentially from the Tribunal, and that is as to whether or not these regulations should continue for a definite time or should be supposed to be in perpetuity. Of course, in one sense the Tribunal could not affect the rights of the nation. Assuming that the award, being enforced by municipal legislation, and in five or ten years time either the United States should take the view that it was not satisfactory, or that Great Britain should take the view that in the circumstance then shewn to exist the state of things was not satisfactory, no award of this Tribunal could limit the right of the country in the future to say.

The PRESIDENT.—I can hardly think it is permissible that you should say such a thing before us. We are doing serious business, and the two Governments have pledged themselves to execute whatever we award. If they break their word, of course they can do so, but they have pledged themselves.

Sir RICHARD WEBSTER.—If you will forgive me for a moment, I was going to deal with that matter. I had not finished the mere expression

of the proposition. I desire to say that if there was a changed state of circumstances after the regulations were in force that could not legally alter the right of a country to say. "We must make a fresh bargain;" but I desire to point out that after this full discussion—that was the very word on my lips—this Tribunal may be of opinion that it has sufficient information to indicate that at any rate they can see so far into the future as to be able to say either that the regulations are so moderate that they will always be useful or at any rate that they ought to last for a period of years: and it seems to me that if the Tribunal took that view then they would or might indicate upon the face of the regulations that they ought not to be touched or interfered with or denounced by either Government for a period, or not until after the period of a given number of years, and then that the moral obligation, as strong as the legal obligation, would be imposed upon those countries for whatever time the Tribunal should indicate. I hope you will follow, Mr. President—I apologize for having ventured to interrupt you—that that was what was in my mind, the sequence of what I desired to put before you that if the Tribunal desired to indicate that either in all time or for a period of years which they thought sufficient to indicate, the regulations ought to be maintained unaltered then the moral obligation would rest on the nations as I have already said. I did not mean in anyway to suggest that either country ought to do otherwise than loyally act up to the award. On the other hand, I feel it my duty to point out that the Tribunal itself cannot tell for certain what the effect of regulations may be. It may be that the herd of seals will become so numerous that they will be in such a condition as to be an injury to the fishing industry of the Pacific. It may be that the herd will not be sufficiently protected for all time, and that therefore the United States may ask for some further protection. According to the best of their lights the Tribunal should, if I may humbly submit, deal with that matter; and it is for that reason that I did not think it respectful to the Tribunal to intimate whether there should be a suggestion by the Tribunal that the regulations should be maintained for a limited time or should be indefinite as to time.

The PRESIDENT.—The point was whether it would be wise for us to foresee a change in circumstances and to legislate for perpetual maintenance of our regulations. That was the question in my mind.

Sir RICHARD WEBSTER.—Yes sir; I have one or two questions to notice.

Before any general scheme for the preservation of seal life as a whole, some opinion must be formed, some mental decision must be come to as to what is a proper condition of things upon the islands. It is absolutely necessary. You may not say anything about it in your award; that I have nothing to do with but in making up your mind what regulations are necessary as a restriction upon the rights of the pelagic sealer you must have formed some opinion in your mind as to what will be the *de facto* exercise of rights by the United States upon the islands. For instance, supposing that you were of opinion that the United States were going to kill every seal within the next five or six years, as they say in law they have a right to do, and I do not deny their legal right to do it; supposing you were of opinion that the United States were within the next five or six years going to kill every seal on the islands, there would be no necessity of regulations at all. On the other hand if you were of opinion that the United States were going to be moderate in the exercise of their so-called rights, then the pelagic sealer, who would be entirely benefitted by that moderation, ought to have his rights

restricted. And from that point of view, notwithstanding the observations of my learned friends I say the British Commissioners approached the problem of zone fairly. Whether or not the particular figures they suggested would be what this Tribunal would think to be fair is entirely a different question; but speaking of it as a proposal, it was a perfectly legal and rational way of dealing with the whole question.

I am afraid my learned friends and those they represent care so little for suggestions made from Great Britain that they probably will think it impertinent of me even to make a suggestion; but having studied this matter, I only put it for their consideration: I think if they were to kill off a certain proportion of the old bulls, really effete bulls, every year, and never drive a seal twice, that is to say, kill all they drive, at any rate, any distance more than a few hundred yards, and periodically leave certain of the rookeries undisturbed, there would very soon be an enormous increase in these herds of seals. Of course my learned friends may suggest that it is impertinent of me even to have made a suggestion of the kind. They may think that nobody appearing for Great Britain has a right to express any opinion with regard to management upon the islands. Certainly the experience in the past would seem to indicate that a little more control is, to say the least of it, desirable. Almost as much has been practically conceded by the United States Case. But, Mr. President, I cannot help thinking that in fixing any regulations, whether in Behring Sea, and still more, as I will say, if you will permit me, afterwards, outside Behring Sea—in fixing any regulations dealing with the question of seal life as a whole, nobody could properly consider the problem without having formed in his own mind some standard idea, as to the way in which the islands will be conducted, and the extent to which the killing will go on in any particular season.

The Tribunal here adjourned for a short time.

The PRESIDENT.—Sir Richard, we are ready to hear you.

Sir RICHARD WEBSTER.—Mr. President, the Tribunal will notice that the Regulations that we propose are confined to Behring Sea; in four respectful contention to this Tribunal looking at the matter as carefully as possible, it seems to us impossible to come to the conclusion that the jurisdiction of this Tribunal was intended to extend anywhere over the ocean. Our submission is that the area of jurisdiction for the purposes of *Regulations* is the same as the area of *Right*. But I particularly desire that the position of Her Majesty's Government should not be misunderstood; Her Majesty's Government, and the Canadian Government have, from the first, been willing, and have expressed their willingness, to concur in any reasonable Regulations for the protection of seal-life as a whole—I mean of seal-life generally; on the grounds we have explained in argument we submit that the jurisdiction of this Tribunal to make Regulations is confined to the area in dispute—that is to say that part of Behring Sea, east of the line of demarcation mentioned in the Treaty of June 1867.

I cannot help reminding you Sir, of one sentence in passing—that if that were not so, you would apparently have jurisdiction to make Regulations for the Commander Islands without the presence, here, of Russia, because those are equally seals in or habitually resorting to Behring Sea; and therefore it would seem to point, of necessity, to the original area which was the subject of so much discussion.

The PRESIDENT.—May I remind you that the Regulations we have to do with are merely between England and the United States.

Sir RICHARD WEBSTER.—That is entirely why I pointed it out, if I may say so.

The PRESIDENT.—There would be no objection in principle even for them to bear on the Commander Islands.

Sir RICHARD WEBSTER.—That is why I ventured to point it out, I only submit it; I must not re-argue it.

Lord HANNEN.—You can scarcely say that the seals in the Commander Islands *habitually* resort to the Pribilof Islands, even though they may sometimes go there.

Sir RICHARD WEBSTER.—There is nothing about habitually resorting to the Pribilof Islands, my Lord. It is habitually resorting to Behring Sea.

Mr. Justice HARLAN.—But Question 5 speaks of seals frequenting the Pribilof Islands.

Sir RICHARD WEBSTER.—I am only too glad to know that my argument has been appreciated by every Member of the Tribunal. In Question 5 it is, "in the fur-seals frequenting the islands of the United States in Behring Sea"; and in Article VII it is "for the proper protection and preservation of the fur-seal in, or habitually resorting to, the Behring Sea". You must not tempt me to reargue this point.

Mr. Justice HARLAN.—Then I withdraw my observation.

Sir RICHARD WEBSTER.—No; the observation must not be withdrawn; but owing to the President's unfailing courtesy in making that observation to me, it did occur to me it was worth while noting in passing that some limitation must be put on those words "in any event". But would you be good enough to consider the particular point I am upon; and that is the position Her Majesty's Government took with regard to Regulations outside Behring Sea.

Senator MORGAN.—The jurisdiction over seals that may be found in the Pribilof herd is not necessarily a jurisdiction over Commander Islands.

Sir RICHARD WEBSTER.—There is nothing about "Pribilof herd", Mr. Senator.

Senator MORGAN.—I think, Sir Richard, there is something.

Sir RICHARD WEBSTER.—Well, if so, it has escaped my attention. I do not think there is anything about Pribilof herd.

Senator MORGAN.—That is my own characterisation of the class of fur-seals that resort habitually to Behring Sea.

Sir RICHARD WEBSTER.—I do not think there is any distinction, for that purpose, between seals going to the Commander Islands and the Pribilof Islands.

Senator MORGAN.—I merely mention that the jurisdiction exercised would not be over the Commander Islands, but over the seals.

Sir RICHARD WEBSTER.—Then, again, though I am being led away from the point I am closely devoting my attention to, it would be in favour of the argument I am presenting. If they are to be given that large area, they would extend to other seals,—

Senator MORGAN.—If it is in favour of your contention, Sir Richard, you are welcome to it, so far as I am concerned.

Lord HANNEN.—As Mr. Gram has pointed out to me, our enquiry is in regard to the questions that *have* arisen between the United States and Great Britain in these matters; and no question has arisen as to the Commander Islands.

Sir RICHARD WEBSTER.—Mr. Gram has put and your Lordship has put to me again that which I ventured humbly to call the attention of the Tribunal many days ago. I am sure you will forgive me for saying that, because you will thereby see that I have not overlooked the point though I abstain from arguing it over again. I am assuming that the Tribunal exercise their own impartial judgment on the matter

I am only desirous that the position of Her Majesty's Government should be known. We submit that it is established that the maximum number of seals to be killed on the Pribilof Island ought to be limited in any year to the number which the condition of seal life upon the islands will permit without unduly reducing the stock.

Senator MORGAN.—Have you any number, Sir Richard, to state?

Sir RICHARD WEBSTER.—It must be less than 100,000, Mr. Senator. I should say, if you ask me to make a submission to the Court; the outside number, according to the present state of things, would be about 60,000 as a real, regular annual figure.

That such maximum number should be from time to time fixed by competent inspectors appointed by the United States Government, having regard to the observed state and condition of the seals, and that full and sufficient records should be kept of the number and sexes of the seals on the islands.

Senator MORGAN.—And subject to a reduction below 60,000 in case of necessity.

Sir RICHARD WEBSTER.—Certainly, I have indicated that by saying it should be fixed from time to time by the United States Inspectors, looking to the observed condition on the Islands.

That all drives on the Islands ought to be carried out under the personal supervision of competent United States Government officials who should be responsible for the due observance of any regulations laid down by the United States.

The PRESIDENT.—That is a suggestion of yours.

Sir RICHARD WEBSTER.—I am pointing out to you what are the conditions that are necessary for seal life as a whole, regarded as distinct from pelagic sealing in Behring Sea. I am assuming that what was so much pressed by Sir Julian Pauncefote is being considered, that is to say, the general welfare of seal life in Behring Sea on the Islands and in the Pacific.

The PRESIDENT.—Altogether.

Lord HANNEN.—Did not I catch from you something about a joint action between the English and the United States.

Sir RICHARD WEBSTER.—I was suggesting this, which is only that which has been agreed to by Russia, that suitable persons designated by the Government of Her Britannic Majesty should be permitted to visit the seal islands from the 15th June to the 15th December to inspect and take copies of the records and confer with the officials in order to obtain necessary information as to the real conditions of seal life.

Senator MORGAN.—That is with a view to further negotiations between those Governments.

Sir RICHARD WEBSTER.—Quite so, Senator. It is with a view that you may understand the position which has been for more than five years maintained consistently and persistently by Her Majesty's Government, and that, upon those conditions being assented to or arranged, Her Majesty's Government are perfectly willing to provide by necessary legislation that there should be no pelagic sealing outside, that is to say anywhere at all prior to the 1st May on the assumption that the United States would agree equally to limit their nationals fixing a corresponding date, it may be a fortnight earlier; I do not know. The question was put to me—San Francisco is about 800 miles lower down, and I should think that a fortnight earlier would be the proper date to take. That is suggested to me by Mr. Tupper and those who well understand this matter, that a fortnight would be a reasonable time between Victoria and San Francisco.

My position, which at any rate has been made clear, is this: the Government of Her Britannic Majesty has as much at heart the welfare of the seal race for the benefit of pelagic sealers as the United States can have for their nationals. It is a more important interest in Canada than it is to the lessees, and the few dollars that go into the Treasury of the United States.

The PRESIDENT.—That is what we may derive from the terms of the Treaty.

Sir RICHARD WEBSTER.—And we are most anxious that a proper arrangement should be made, and as I have said, and I wish to repeat, Sir Julian Pauncefote expressed it over and over again, but that is perfectly independent of the questions that had arisen as a matter of controversy and which are, for the reasons we have submitted, to be arbitrated upon by this Tribunal.

The PRESIDENT.—It being admitted that both nations very sincerely wish for the preservation of seal life, you will permit me, Sir Richard, to ask you a question? I heard you mention, possibly as making an admission, for it is the general wish of both nations, that you supposed the fair average number of seals proper to dispose of on the Islands would amount to 60,000?

Sir RICHARD WEBSTER.—I was asked by the learned Senator to make a suggestion and I believe that is the maximum.

The PRESIDENT.—Will you allow me to ask—it is a theory, and we can only admit this as a theory, as we are not here to make Regulations inside the territorial rights of each nation, how many seals would you suppose might, on an average, be taken by pelagic sealing every year?

Sir RICHARD WEBSTER.—You see Mr. President, that would practically speaking correct itself, because the character of pelagic sealing is that only a certain proportion, so to speak, of seals can be captured. It is not possible, as was suggested by Mr. Coudert, for ships to crowd the sea and kill every possible seal. I should have thought in that respect, a part from questions of discrimination, it is perfectly true that pelagic sealing contains in itself a self correcting element or safety valve so to say.—That you cannot kill an exceptional number, but remember that I have assumed that the original Regulations to which I have called attention are supposed to be enforced under any circumstances which imposes the condition of no pelagic sealing at all in Behring Sea up to the 1st July, and no pelagic sealing at any time within a fixed limit, rigidly speaking, of 20 miles, which means practically 30 miles. We assume those to be in force always, and I submit under the circumstances that pelagic sealing cannot practically injure the race.

The PRESIDENT.—Though it may take a very large proportion,—as we have seen in the last year—a very large amount of seals?

Sir RICHARD WEBSTER.—Well that depends, Mr. President, on what you mean by "proportion". If you only mean "quantity" they may take a large quantity.

The PRESIDENT.—I mean both.

Sir RICHARD WEBSTER.—Well, I should have doubted, with all respect, if "proportion" was a correct expression. Would you define first with what you would compare it?

The PRESIDENT.—With the killing on the Islands.

Sir RICHARD WEBSTER.—I should have doubted if the outside number of seals that could be killed on the Islands under any circumstances, would amount to more than something a little over 60,000. I do not think, or rather I should say I submit it to you that the pelagic sealing at sea will affect that number for this reason, that the seals taken at

sea by pelagic sealing taken on our submission, to a large extent are a class of seals not frequenting the islands at the time. I do not refer to that, but the barren females who will be found away from the islands, and a large number of others, have no motive or inducement to go—take the male seals which are not forming part of the breeding or producing stock upon the islands.

The PRESIDENT.—We have had the number of seals killed at sea last year and the year before, and the amount was 70,000.

Sir RICHARD WEBSTER.—You are speaking, I think, of the amount of seals killed in 1891.

The PRESIDENT.—1891 and 1892.

Sir RICHARD WEBSTER.—To a large extent outside of Behring Sea.

The PRESIDENT.—And Behring Sea is to be added.

Sir RICHARD WEBSTER.—As a matter of fact there were killed there, Sir, 500 only.

The PRESIDENT.—It should be added if Behring Sea was left open.

Sir RICHARD WEBSTER.—Of course, one must have it one way or the other. It cannot be put against me both ways. All pelagic sealing up to July 1st is stopped, and you have to contrast the new state of things with the old; and my submission to this Tribunal is that after the 1st July in every year sealing in Behring Sea would stand at about a normal figure. It may be 30,000 or 25,000 or thereabouts, but it would be directed to and attack a class of seals that to a large extent would not be going to the Islands, and would never be got by the people on the Islands at all. I have endeavored to make my point clear on that, and I hope I have done so.

The PRESIDENT.—You do not say outside Behring Sea there would not be seals killed also.

Sir RICHARD WEBSTER.—Outside Behring Sea; the position of Her Majesty's Government is that upon reasonable arrangements made that an undue quantity should not be killed on the islands they would be willing to prohibit pelagic sealing until the 1st of May which would cut off all the dangerous killing, outside as well as inside.

The PRESIDENT.—What do you consider not to be dangerous?

Sir RICHARD WEBSTER.—The killing of seals south of the Aleutian Islands after the 1st May, and in Behring Sea after the 1st July, outside the 30 mile zone, dealing with the matter as a whole. If I have not made the point clear, Sir, I would ask you to put the question again.

The PRESIDENT.—I think you have made it quite clear; but I also think that the questions I have put have contributed to make it more clear to me at any rate.

Sir RICHARD WEBSTER.—I have not the smallest doubt as to that, of course, Sir.

The PRESIDENT.—And I would like to know the total average in the killing of seals that is admissible both on sea and on land.

Sir RICHARD WEBSTER.—The killing of seals, both male and female altogether would amount to something like 90,000 or 100,000, but you must not understand me as admitting the absurd contention that killing a female necessarily reduces the number of a herd. I do not want to go back on that: it is such an outrageous contention.

The PRESIDENT.—That has been argued very fully.

Sir RICHARD WEBSTER.—Because if what I say were so, the herd would have disappeared years and years ago, because hundreds and thousands are killed every year. If you put it to me what is meant by the total killing, I should say a total killing on land and sea of between

90,000 and 100,000 of which about 60,000 are killed on the Islands and between 30,000 and 40,000 at sea. I do not refer to the Russian side, but the catch on the coast and in Behring Sea. I must not be understood as to be going back from the position that both my learned Leader and I took up as to what is the function of this Tribunal under Article VII.

Senator MORGAN.—Now, Sir Richard, as to the License System proposed here; I wish to ask a question for information, in order to ascertain the attitude of the Counsel for the British Government. Does this system, as you propose, require that all licenses shall be taken out at the particular ports, and that other pelagic hunting is unlicensed?

Sir RICHARD WEBSTER.—So far as our nationals are concerned, it would be unlawful.

Lord HANNEN.—They would have to clear from those Ports?

Sir RICHARD WEBSTER.—And be licensed to seal. Our object is to be satisfied that the country gets full information, and that the vessels are obliged to be under proper control.

The PRESIDENT.—And what as to the Indians sealing on the coasts?

Sir RICHARD WEBSTER.—If I were to speak of that in the way in which I think it ought to be spoken of, perhaps my learned friends would get angry.

Mr. CARTER.—No, Sir Richard, please do not hesitate on that score.

Sir RICHARD WEBSTER.—I assure you I have a very great consideration for it; but the Indians on the coast or many of them have become and developed into being pelagic sealers. Several of the schooners are actually owned by Indians, and to suggest that they are to be specially protected, according to the philanthropic instincts of my learned friends, paddling their own canoes, two at a time, and wearing the seal-skins, I do not think contributes much to this very interesting discussion.

Senator MORGAN.—I suppose, under your system, either Great Britain or the United States would have to establish a way to prevent citizens of both countries from obtaining licenses as fictitious traders?

Sir RICHARD WEBSTER.—I will say a word or two on that in a moment.

Now, what have I on the other side? The burthen has rested entirely on Great Britain of arguing this question of Regulations. My learned friends, Mr. Phelps and Mr. Carter, in their wisdom, on behalf of the great Country, one of the mightiest countries in the World, have thought fit to propose to this Tribunal a Regulation which they know and must know is degrading to my Country. They ask you, this Tribunal, to say this:—Decide every issue of right against the United States, the issues they themselves selected,—decide them against the United States; say that British, French, German, Italian and all countries are to have equal rights upon the high seas; but so far as Great Britain is concerned the next moment destroy that right absolutely and for ever over an area that never entered into the purview of the United States Representative or Great Britain's Representative when it was being discussed. I confess to my country it was somewhat humiliating to hear the United States suggest that this was the kind of thing to be enforced on Great Britain by the Award of this Tribunal. Mind, Sir, you are making an Agreement for the parties; and when I look at this proposal and at the attitude of the United States, the ships of Great Britain and under the British flag are to be seized and taken in by United States cruisers and condemned in United States courts.

Why, it is not 20 years ago, or barely 20 years ago, when the United States absolutely claimed that the United States flag, even if fraudu-

lently exhibited, was to be a protection against either search or seizure. When Great Britain protested that, if a fraudulent use of the United States flag was made so that it covered the Slave Trade which was recognized as unlawful in both Countries, facilities ought to be given for the search. "No", said the United States, "our flag is inviolable upon the sea"; and yet, in the face of this, it is to be suggested that you are to impose upon Great Britain the humiliation that you are to tell Great Britain her vessels are to be seized by American cruisers and taken into the nearest port. I think a little consideration might have brought it to the minds of those who instruct my learned friend that such a Regulation was not a Regulation fit to be submitted to this Tribunal. But I ask the Tribunal to consider it from another point of view. Will you remember the concluding words of article VII?

The High Contracting Parties furthermore agree to co-operate in securing the adhesion of other Powers to such Regulations.

The Regulations are to be such that Great Britain and the United States can have a reasonable hope of inducing other Powers to adhere to them on the ground of humanity and of mutual self-interest and some other grounds which may commend themselves; but, on the hypothesis that we are discussing, there will be no such inducement that can be offered. Every other national is to be excluded from sealing over these millions of square miles, an area, as the Attorney General pointed out, vastly larger than ever entered into the minds of the despotic potentates in years gone by; and I want to know how would it be possible to prevent the very abuse that Senator Morgan called attention to a moment ago that of sailing under foreign flags, a thing to be deprecated by every right-minded citizen or subject,—Japan or Russia to say nothing of the flags of other countries would be, of course, an ample protection assuming Great Britain to be the only nation whose nationals were prevented from sealing over this vast area.

But I take leave to say on behalf of Great Britain it is not a regulation at all. Prohibition is not Regulation, and many examples of that can be given. We know with reference to the liquor traffic—we know what regulating the sale and manufacture of intoxicating liquors is, and we know what prohibiting them is. In no Court save in this could it be possible to suggest that you are under cover of a regulation to enforce an absolute and positive prohibition. Sir, the United States say that they will not discuss this question of regulations at all. Nothing will satisfy them but absolute and total prohibition over this vast area. Would that promote peace? We hoped in all probability that my learned friend Mr. Phelps might indicate that there was some intention of discussing the basis of regulations from a more moderate standpoint. But no: at the invitation of my learned friend the Attorney General, Mr. Phelps said he should maintain that those were their rights; that by the form of regulations read by Mr. Foster, at the conclusion of the Attorney General's speech, on behalf of the United States he elected to stand; and, as part of that, the right claimed by the United States, for the first time for 50 years, is of searching and seizing vessels of a friendly flag, in time of peace, on the high seas; taking them in and condemning them in their own ports, as though they were pirates, or, to use the phrase actually used in the United States argument, *hostes humani generis*. There is not a suggestion of this in the Diplomatic Correspondence all through these years; no suggestion made that such a proposal is to be agreed to by Great Britain, and I remind you with great respect, Mr. President, that this Tribunal is

only making for the parties the agreement which, according to the judgment of the Tribunal, they ought to have made for themselves. Could any body suggest in fairness, with any lingering feeling that there ought to be in the breast of the United States towards the Old Country, that the degrading prohibition, with reference to the right of seizure and search by the national ships of the United States, should be imposed on Great Britain in the interest of the preservation of seal life, no necessity for such a thing having been shown, and it being foreign to any reasonable scheme that has hitherto been suggested.

Sir, I hope, at any rate, difficult as my task may have been, and performed, without appreciating, possibly, the full weight and proportion of every point, that I have, at any rate, satisfied this Tribunal that the proposals of the United States are unjust in themselves, and such as this Tribunal would not in any way enforce. I ask you again to believe that which has been put forward so clearly by the Attorney General, that we have approached this question of regulations with the honest intention of assisting the Tribunal to get at the facts, with no desire to injure the seal-race, or to require for the pelagic sealer anything that belongs to the United States. It is a common interest to be protected. Our rights are supposed to be declared. Those rights are to be protected, and to be interfered with only if it is necessary to prevent the destruction of seals. If the United States desire to reserve to themselves the monopoly of destroying seals entirely, they will always have that as they have the possession of these islands; but the regulations which this Tribunal should direct, we respectfully submit, are regulations based upon the fact that the rights of British subjects, and of all other nations, to seal upon the high seas has been established, and that those rights are only to be curtailed to the extent that is necessary in order to prevent their injuriously affecting the seal-race. Sir, it may occur in the rest of this case that some point has escaped my attention, and should such point be started we may have to ask you to hear us upon it, but I ask the Tribunal to be good enough to take into their consideration that which we have addressed to them on this question of regulations; and we believe, at any rate, that the Award of this Tribunal, or its determination, will be just and equitable, and will not be couched in such a way as it must be couched if it adopted the United States Regulations to destroy at one stroke the rights previously declared to exist in British sealers.

The PRESIDENT.—Sir Richard, with all thanks and gratitude for your very business-like and useful argument, let me put one question more to you. According to what you suggest, as to the measure of police which might be adopted in your Regulations towards the sealers of each nation, do you mean to say that the police even during the close season and within the close area, should belong exclusively to the public navy of either nation concerned.

Sir RICHARD WEBSTER.—No, Sir, what I mean is this. I only contend for that for which the United States universally contended up to this point, and which Russia, Great Britain, France, and, as far as I know, every other civilized country has always contended for successfully that if a ship is found infringing the convention by the ships of another nation it shall be handed over for justice to the Courts of its own flag.

The PRESIDENT.—You admit of its being arrested by a foreign ship then.

Sir RICHARD WEBSTER.—Assuming it to have broken the Treaty and assuming that Treaty to be in force with the country whose flag the vessel was flying. Thus it is provided that if British vessels are

seized by Russians, they shall be forthwith handed over at Yokohama or at any port in the British possessions for trial by the British authorities, and I say, with deference to my learned friend Mr. Phelps experience, and anybody who is acquainted with these matters of international comity and agreement, that I am aware of no case where a civilized nation has allowed her ships to be seized and handed over to other Tribunals except in cases in which the country has practically agreed to the establishment of Courts, which Courts are to have jurisdiction over their own subjects. A case very familiar to you, no doubt, Mr. President, is that of Tunis, where Great Britain, has recognized the Existence of the French Courts in Tunis and has consented to abolish her own consular courts there. But I am aware of no case where it has been insisted that the United States cruisers may seize British ships and condemn them in United States Courts.

The PRESIDENT.—I would ask, Sir Richard, if it is your opinion that these matters should be within the sphere of the Regulations that we have been called upon to make?

Sir RICHARD WEBSTER.—I should have thought not, Sir, I should have thought you were intended to determine, and I speak with great deference, what Regulations were necessary for the preservation of seal life and not intended to tell either nation, that is either the United States or Great Britain, how the Regulations so determined upon were to be enforced for their respective nationals. Might I put another case? Suppose you should be of opinion a fine of $500 would be proper fine for a breach. I do not think that that would be the kind of thing to be imposed by these Regulations.

I think the United States would be entitled to say that we think $500 is too much or too little. That is a matter that the Tribunal might have left us to carry out. My reading of these words is Regulations necessary for the preservation of seal life—not Regulations *to enforce* the Regulations which are necessary—and it would seem to me that the purview of your jurisdiction would be governed by the words, "what is necessary for the purpose of the protection of seal life", and not "what is necessary for the purpose of enforcing those Regulations" which you have yourself described. I do not know if I make my meaning clear?

The PRESIDENT.—Perfectly. Then in your view we should not be competent to frame Regulations which would practically amount to the same as a convention between both Governments concerning these questions.

Sir RICHARD WEBSTER.—If you mean by that the clause relating to procedure, I think certainly not. I cannot think a better case than the United States demand. They demand that no citizen or subject of the United States or Great Britain shall kill and so on. Then that the foregoing Regulations should apply to and extend over all those parts east of the 180th meridian down to the 35th parallel, and so on; and any boat or craft other than those mentioned and described which may be found engaged in sealing, and so on, may be seized and captured by any armed vessel and condemned in any Court of competent jurisdiction. I on behalf of Great Britain do not ask that such a degradation should be inflicted on United States citizens.

The PRESIDENT.—That is another question. I understand this sanction of penalty seems to be too strong and contrary to the dignity of your Government, but another mode of sanction may be thought of, the sanction between Russia and Great Britain for instance—in the same sense as it is in the *projet* of the United States you might accept of it being brought into Regulations.

Sir RICHARD WEBSTER.—My answer is that it is based on the 14th article.

The High contracting Parties engage to consider the result of the proceedings of the Tribunal of Arbitration as a full, perfect, and final settlement of all the questions referred to Arbitration.

In my submission no question is referred to the Arbitrators as to the way in which Regulations should be enforced.

The PRESIDENT.—It is referred to us by the contention of the other side.

Sir RICHARD WEBSTER.—By the formal paper handed in, yes. Not by the contention of the other side as appearing from any of their documents up to that time, neither in the Case, Counter Case, Argument or Diplomatic Correspondence. I am aware that General Foster, representing the United States, has made that demand, but that is the first time that such a demand has appeared.

Mr. GRAM.—But, Sir Richard, is it not your contention that we should include in your Regulations this sentence that the "License should be subject to forfeiture for breach of the above Regulations?"

Sir RICHARD WEBSTER.—I suggested that that would be a reasonable recommendation; it is what I may call a Regulation necessary for the protection of seal life.

Lord HANNEN.—It is a penalty.

Sir RICHARD WEBSTER.—You must draw the line somewhere. I take the view that mere machinery for the enforcement of Regulations was not intended to be referred.

Lord HANNEN.—I think to be consistent, you must strike out that.

Sir RICHARD WEBSTER.—It occurred to me that it might be said to be going too far, but it seemed also to be very near the line. I looked at it in this view, though I hope you will not think I want to justify myself, that I thought the Tribunal might think a Captain or an owner who has broken the license is not a fit person to be licensed a second time. That was the idea. It does not seem to be quite enforcing the same thing as procedure, or penalty, or condemnation of a vessel, but I really did not think very much of the question of consistency in putting it down, but really what was a proper Regulation.

The PRESIDENT.—In Article III of the Treaty for the *Modus Vivendi*, it is provided:

Every vessel or person offending against this prohibition in the said waters of Behring Sea outside of the ordinary territorial limits of the United States, may be seized and detained by the naval or other duly commissioned officers of either of the High Contracting Parties, but they shall be handed over as soon as practicable to the authorities of the Nation;

and so on.

That is about the same plan as suggested. This is embodied in the Treaty regulating the *Modus Vivendi*. You construe it that this Treaty is, to a certain extent, the form of the Regulations?

Sir RICHARD WEBSTER.—Well, Sir, I cannot go back from what I have said. I do not consider it so, if you ask me; but I must point out, if that had been the form of the demand, there would have been no question about it. Assuming terms to be arranged, Great Britain and the United States would agree that that is reasonable. My point is, that to impose upon the nationals of another Country such a Regulation is going far beyond any mere question of agreement, and is laying down a penalty which is to be the consequence of a breach. I admit it also was open to the observation that we have gone too far in Article VIII. I accept the criticism, though I do not know that it injures very much the argument I have been contending for, that I have gone too

far in the Regulation that I propose. I do not know if there is anything else?

The PRESIDENT.—No.

I only wish to observe that we are not to be limited by any question concerning the mode of the execution of the Regulations we may award; because that is not our business, but of the interior constitution of each country. Whether the country requires the interference of Parliament or of Congress, or does not require it, that is an affair which concerns each party; but we are here before Nations, and not before the Governments. The Government represents the Nation; and it is the business of the Nations between themselves to see how they divide their constitutional powers; we have not to enter into that.

Sir RICHARD WEBSTER.—No, and I would rather withdraw the 8th Regulation than lay myself open to any charge of inconsistency. It seems such a very minor point.

Sir JOHN THOMPSON.—The inconsistency could easily be removed by inserting in section 2 that such licenses shall only be granted to sailing vessels and to persons who have observed these Regulations.

Sir RICHARD WEBSTER.—Yes; but, in all probability, the language of Article 8 is open to objection.

Senator MORGAN.—I was about to say, Sir Richard, that I understand the position the United States has taken is that this Tribunal has no power to ordain Regulations to operate within Behring Sea, and the position of Great Britain is that we have no power to ordain Regulations to operate outside Behring Sea?

Sir RICHARD WEBSTER.—I have not heard that contention of the United States, Sir. It may come in reply, but I have not heard it hitherto.

Mr. CARTER.—That is not our view of our contention, Sir.

Senator MORGAN.—Then, the only question as to that branch of the subject is, whether this Tribunal has jurisdiction to ordain Regulations to operate outside of Behring Sea and in Behring Sea, as a concession? I merely want to know the attitude of the parties.

Sir RICHARD WEBSTER.—Well, I do not think that my learned friend Mr. Carter would put it as a matter of concession. Our view has been that the United States did claim to prohibit as of right British subjects from sealing in Behring Sea, and that the right of the Tribunal to make Regulations inside Behring Sea, which was the alternative of the five Questions, was obviously not any matter of concession by us. It is admitted, on the face of the Treaty, the only question is whether or not Article VII includes a question of Regulations outside Behring Sea on that point.

Mr. CARTER.—Our view is there is no difference between Behring Sea and outside Behring Sea on that.

Sir RICHARD WEBSTER.—So I said.

Mr. TUPPER.—With your permission, Mr. President, I would interpose for a moment. The Tribunal will recollect that a statement was prepared, to aid the Tribunal, of the Facts which the British Government desired to be found; a Counter-Statement was submitted by General Foster, for the United States, as to the facts which the United States desired should be found, and with the aid of counsel on both sides, General Foster and I have been able to agree upon this statement which of course removes the other two statements from the consideration of the Tribunal.

The Findings of Fact upon which we are agreed are as follows.

1. That the several searches and seizures, whether of ships or goods, and the several arrests of masters and crews, respectively mentioned in the Schedule to the

British Case, pages 1, to 60, inclusive, were made by the authority of the United States Government. The questions as to the value of the said vessels or their contents or either of them, and the questions as to whether the vessels mentioned in the schedule to the British Case, or any of them, were wholly or in part the actual property of citizens of the United States, have been withdrawn from and have not been considered by the Tribunal, it being understood that it is open to the United States to raise these questions or any of them, if they think fit, in any future negotiations as to the liability of the United States Government to pay the amounts mentioned in the schedule to the British Case.

2. That the seizures aforesaid, with the exception of the "Pathfinder" seized at Neah Bay, were made in Behring Sea at the distances from shore mentioned in the Schedule annexed hereto marked "C".

3. That the said several searches and seizures of vessels were made by public armed vessels of the United States, the commanders of which had, at the several times when they were made, from the Executive Department of the Government of the United States, instructions, a copy of one of which is annexed hereto, marked "A" and that the others were, in all substantial respects, the same: that in all the instances in which proceedings were had in the District Courts of the United States resulting in condemnation such proceedings were begun by the filing of libels, a copy of one of which is annexed hereto, marked "B", and that the libels in the other proceedings were in all substantial respects the same: that the alleged acts or offences for which said several searches and seizures were made were in each case done or committed in Behring Sea at the distances from shore aforesaid: and that in each case in which sentence of condemnation was passed, except in those cases when the vessels were released after condemnation the seizure was adopted by the Government of the United States; and in those cases in which the vessels were released the seizure was made by the authority of the United States. That the said fines and imprisonments were for alleged breaches of the municipal laws of the United States, which alleged breaches were wholly committed in Behring Sea at the distances aforesaid from the shore.

4. That the several orders mentioned in the Schedule annexed hereto and marked "C" warning vessels to leave or not to enter Behring Sea were made by public armed vessels of the United States the commanders of which had, at the several times when they were given, like instructions as mentioned in Finding 3, above proposed, and that the vessels so warned were engaged in sealing or prosecuting voyages for that purpose, and that such action was adopted by the Government of the United States.

5. That the District Courts of the United States in which any proceedings were had or taken for the purpose of condemning any vessel seized as mentioned in the Schedule to the Case of Great Britain, pages 1 to 60, inclusive, had all the jurisdiction and powers of Courts of Admiralty, including the prize jurisdiction, but that in each case the sentence pronounced by the Court was based upon the grounds set forth in the libel.

ANNEX "A".

[See British Counter Case, Appendix, Vol. I, p. 72.]

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, April 21, 1886.

SIR: Referring to Department letter of this date, directing you to proceed with the revenue-steamer "Bear," under your command, to the Seal Islands, etc., you are hereby clothed with full power to enforce the law contained in the provisions of Section 1956 of the United States Revised Statutes, and directed to seize all vessels and arrest and deliver to the proper authorities any or all persons whom you may detect violating the law referred to, after due notice shall have been given.

You will also seize any liquors or fire-arms attempted to be introduced into the country without proper permit, under the provisions of Section 1955 of the Revised Statutes, and the Proclamation of the President dated 4th February 1870.

Respectfully yours,

C. S. FAIRCHILD, *Acting Secretary.*

Captain M. A. HEALY,
Commanding Revenue-Steamer "Bear" San Francisco, California.

ANNEX "B".

[See British Case, App., Vol. III, U. S. No. 2, 1890, p. 65.]

In the District Court of the United States for the District of Alaska, August Special Term, 1886.

To the Honourable LAFAYETTE DAWSON,
Judge of said District Court:

The libel of information of M. D. Ball, Attorney for the United States for the District of Alaska, who prosecutes on behalf of said United States, and being present

here in Court in his proper person, in the name and on behalf of the said United States, against the schooner "Thornton" her tackle, apparel, boats, cargo, and furniture, and against all persons intervening for their interest therein, in a cause of forfeiture, alleges and informs as follows:

That Charles A. Abbey, an officer in the Revenue Marine Service of the United States, and on special duty in the waters of the district of Alaska, heretofore, to wit, on the 1st day of August, 1886, within the limits of Alaska territory, and in the waters thereof, and within the civil and judicial district of Alaska, to wit, within the waters of that portion of Behring Sea belonging to the said district, on waters navigable from the sea by vessels of 10 or more tons burden, seized the ship or vessel, commonly called a schooner, the "Thornton," her tackle, apparel, boats, cargo, and furniture, being the property of some person or persons to the said Attorney unknown, as forfeited to the United States, for the following causes:

That the said vessel or schooner was found engaged in killing fur-seal within the limits of Alaska Territory, and in the waters thereof, in violation of section 1956 of the Revised Statutes of the United States.

And the said Attorney saith that all and singular premises are and were true, and within the Admiralty and maritime jurisdiction of this court, and that by reason thereof, and by force of the Statutes of the United States in such cases made and provided, the afore mentioned and described schooner or vessel, being a vessel of over 20 tons burden, her tackle, apparel, boats, cargo and furniture became and were forfeited to the use of the said United States, and that said schooner is now within the district aforesaid.

Wherefor the said Attorney prays that the usual process and monition of this honourable court issue in this behalf, and that all persons interested in the before mentioned and described schooner or vessel may be cited in general and special to answer the premises, and all due proceedings being had, that the said schooner or vessel, her tackle, apparel, boats, cargo and furniture may, for the cause aforesaid, and others appearing, be condemned by the definite sentence and decree of this honourable Court, as forfeited to the use of the said United States in such cases made and provided.

M. B. BALL,
United States District Attorney for the District of Alaska.

ANNEX "C".

The following Table shows the names of the British sealing-vessels seized or warned by United States revenue cruizers 1886-90, and the approximate distance from land when seized. The distances assigned in the cases of the "Carolena", "Thornton", and "Onward" are on the authority of U. S. Naval Commander Abbey (see 50th Cong., 2nd Sess., Senate Ex. Doc. No. 106 pp. 20, 40, 50). The distances assigned in the cases of the "Anna Beck", "W. P. Sayward", "Dolphin", and "Grace" are on the authority of Captain Shepard, U. S. R. N. (Blue Book, United States No. 3 (1690), pp. 80-82. See Appendix, vol. III, Neah Bay is in the State of Washington, and the "Pathfinder" was seized there on charges made against her in Behring Sea in the previous year. She was released two days later.

Name of vessel.	Date of seizure.	Approximate distance from land when seized.	United States vessel making seizure.
Carolena	August 1, 1886	75 miles	Corwin.
Thornton	— 1. —	70 —	—
Onward	— 2. —	115 —	—
Favourite	— 3. —	Warned by "Corwin" in about same position as Onward.	
Anna Beck	July 2. 1887	66 miles	Rush.
W. P. Sayward	— 9. —	59 —	—
Dolphin	— 12. —	40 —	—
Grace	— 17. —	96 —	—
Alfred Adams	August 10. —	62 —	—
Ada	— 25. —	15 —	Bear.
Triumph	— 4. —	Warned by "Rush" not to enter Behring Sea.	
Juanita	July 31. 1889	66 miles	Rush.
Pathfinder	— 29. —	50 —	—
Triumph	— 11. —	Ordered out of Behring Sea by "Rush". (?) As to position when warned. 35 miles.	Rush.
Black Diamond	July 11. —	66 —	—
Lily	August 6. —	Ordered out of Behring Sea by "Rush."	
Ariel	July 30. 1889	Ditto	
Kate	August 13. —	Ditto	Rush.
Minnie	July 15. —	65 miles	—
Pathfinder	March 27. —	Seized in Neah Bay	Corwin.

Senator MORGAN.—Is that to go in as a part of the Award?

Mr. TUPPER.—This is to go in connection with the discussion of the questions in order to assist the Tribunal in the preparation of their Award, and to intimate to them how far we agree upon the facts in dispute.

Senator MORGAN.—Is that to be in any sense part of the Award?

Mr. TUPPER.—It is for the Tribunal to say in their framing of the Award; but these are facts upon which we agree, which the Arbitrators, we submit, must consider, in making their Award.

Senator MORGAN.—An interesting point suggests itself to my mind. If this is to be a part of the Award, it would imply that this Tribunal has a right to leave certain matters open for negociation connected with this whole subject.

Mr. TUPPER.—In reply, I may say frankly, the position is simply this. We found ourselves in dispute as to certain subjects—for instance the ownership of vessels and the amount of damages,—and in order to relieve the Tribunal of dealing with those questions, we took the responsibility (and we take it now), of withdrawing them from this Tribunal with the understanding among ourselves that neither party will be prejudiced when those questions come up, by this action on our part, instead of asking the Tribunal to hear a long discussion first as to the law touching these questions, and then asking for an examination into the facts and the contradictory statements that are before them, or might be before them, in that connection.

Senator MORGAN.—That is all very proper, but it suggests to my mind that the Tribunal of Arbitration possesses (in the estimation of Counsel on both sides), a power of submitting some of the questions brought to our attention—I do not say questions submitted—questions brought to our attention—to future negociation between these two Governments.

The PRESIDENT.—I believe, Mr. Senator, that it is in conformity with Article VIII of the Treaty.

Sir RICHARD WEBSTER.—That is exactly what I was going to call the Senator's attention to. It says either party may ask for.

The PRESIDENT.—It says:—"the question of the liability of either government upon the facts found to be the subject of further negociation."

Senator MORGAN.—That would excuse us from saying that it was to be the subject of future negociation, because the Treaty has so ordained it.

The PRESIDENT.—May I beg General Foster to give us his official confirmation of that?

General FOSTER.—I express my acquiescence in the statement submitted by the Agent for Great Britain with this explanation:—that the United States has never asked for any finding of facts. I have submitted some amendments to the Finding of Facts submitted by the Agent for Great Britain, and we agree upon the paper that has been just now presented.

The PRESIDENT.—Thank you. I understand that these Facts or Findings are submitted to us merely for our consideration?

Mr. TUPPER.—Certainly.

The PRESIDENT.—They are not considered to be necessarily embodied in our final Award—that is what I take from your words?

Mr. TUPPER.—I am not insisting on the particular method in which that Award is to be framed. I guarded myself by stating that so far as we could relieve the Tribunal, we have done so by telling the Tribunal upon what facts we are agreed.

The PRESIDENT.—But according to Article VIII the Tribunal is called upon to find.—

Sir RICHARD WEBSTER.—All facts submitted.

The PRESIDENT.—To find questions of fact involved in certain claims which would be submitted to us, but only if they are submitted to us. That is why I enquired whether you, Mr. Tupper, submitted them to us in such a way that we, in making our Award, are to award upon them, or whether they are merely for our own private consideration?

Mr. TUPPER.—Among the facts submitted were the two facts, ownership and damages. They are now withdrawn and are not submitted.

Sir RICHARD WEBSTER.—Mr. Tupper put it perfectly clearly, and Mr. Carter will agree with me I am sure. A number of facts mentioned here, (which are not in dispute), are questions of fact which are submitted by Great Britain. With regard to certain other matters, desiring to reserve fairly the rights of the United States, we have simply stated, upon the face of this, certain other matters which are not submitted in order that it may not be said that the Tribunal have decided them one way or the other.—That was all.

The PRESIDENT.—What is the use of submitting to us questions of fact upon which you both agree?

Sir RICHARD WEBSTER.—Because it is desirable that there should be a record of the matter.

Senator MORGAN.—We have to make an award.

Mr. CARTER.—The Tribunal of course will understand that it has been no part of our purpose to supercede the judgment or action of the Tribunal on these Findings.

Sir RICHARD WEBSTER.—Of course not.

Mr. CARTER.—Great Britain desired that certain Findings of Fact should be made pursuant to the provisions of that Treaty. For that purpose the Agent for Great Britain submitted a form of those, some days ago. We objected to the Findings in that form, and proposed certain Amendments to it. At a subsequent interview between us, inasmuch as we were satisfied as to the facts which were proved, and which could not, in our judgment, be disputed, we agreed as to the form in which this submission should be made by Great Britain—it is Great Britain's submission; not ours. But, at the same time, of course it is not binding upon the Tribunal except so far as they are obliged, under the terms of the Treaty, to make a Finding upon such questions as are submitted.

Lord HANNEN.—The position of things seems to me to be very simple: the Counsel for Great Britain ask for a Finding upon certain Facts. Suppose you [Mr. Carter], disputed them, you would have to go into evidence upon the subject. But instead of disputing them, you admit them. Thereupon this Tribunal is in possession of the materials upon which to give a Finding.

Sir RICHARD WEBSTER.—Yes.

Mr. Justice HARLAN.—Or if we chose not to accept that Finding of fact, we could make a Finding for ourselves.

Lord HANNEN.—Undoubtedly.

Mr. CARTER.—Undoubtedly; that is our understanding.

Senator MORGAN.—But if we accept the Finding in the form in which it has been presented by agreement of Counsel, the form of the proposition is, that this Arbitration has a right to decree that a certain matter may be left open and negociated upon.

Mr. CARTER.—I do not so understand.

The PRESIDENT.—According to the provisions of article VIII,

Senator MORGAN.—If you leave it to article VIII, that is all very well.

Mr. CARTER.—The fact is simply stated—that certain questions are withdrawn from the Tribunal, and not passed upon by them. If the Tribunal chooses to accede to that statement, why, it will stand acceded to. What the consequence of it may be is another thing. That will have to take care of itself.

The PRESIDENT.—In the name of Great Britain, you, Mr. Tupper, call upon us to make a Finding?

Mr. TUPPER.—Yes. The Counsel have done so, and I stated upon what Facts we agreed.

Senator MORGAN.—I suppose if we adopt it in the form presented by the agreement of Counsel, what we do is to affirm that this Tribunal has a right to leave a matter open to negociation which has been submitted to us for decision?

Sir RICHARD WEBSTER.—Nothing is left open not contemplated by the Treaty.

Senator MORGAN.—I merely speak of the form in which it is submitted. I am not adverse to it because I think there are probabilities in this case in which we might find it necessary to leave some matters open to negociation.

The PRESIDENT.—I think the matter has been cleared in so far as it can be cleared at present.

FUR-SEAL ARBITRATION.

ORAL ARGUMENT

ON

REGULATIONS

BY

MR. CHRISTOPHER ROBINSON, Q. C.,

ON BEHALF OF GREAT BRITAIN.

FORTY-FIRST DAY, JUNE 20TH, 1893.

Mr. ROBINSON.—Mr. President, my learned friends have asked me to dispose of two or three matters of detail connected with this branch of the case; and I think it would be better for me to dispose of them before I proceed to make such general observations as may seem worth while to me in regard to the question of regulations generally. Those points are: The question of the food of the seals; the question of the waste which is consequent upon pelagic sealing by reason of the numbers lost; and the question of raids.

It may be remembered that the question was asked as regards the food of these seals, what their general food was, where they come to take it, and whether they are in the habit of living upon salmon. I think those questions were asked in connection with the subject which, as the learned President remarked, might become more material when the question of regulations came up for consideration, namely, the effect of the seals on the industry of the food fish.

The question is of course a material one. We have the evidence upon it analyzed and connected so that we can show exactly what the nature of the proof is which the case affords. I may say generally that there seems to be little question of this:—That the seals feed to a large extent upon salmon and upon herring; that they follow the schools of herring into the interior waters and sounds, and that their movements depend to a large extent upon the movements of those fish. I think that is the effect and character of the evidence. I do not think the seals confine themselves to any special kind of fish; but, as I have said, salmon and herring are the chief kinds upon which they live. Then they live very largely upon the squid, and it so happens for some reason that many of the witnesses speak to that upon our coast—that is to say, upon the eastern coast—they live very largely upon salmon and herring, while upon the western coast they live very largely upon squid. Whether it is that salmon are not to be found there, or what the reason may be, I do not know; but is so stated.

Senator MORGAN.—What is a squid?

Mr. ROBINSON.—I would hardly like to say.

Lord HANNEN.—It is a kind of cuttle fish, a small cuttle fish.

Mr. ROBINSON.—Then, may I ask whether the beaks that are found are the beaks of squid?

Lord HANNEN.—Yes; that is what you may call the skeleton of the squid.

Senator MORGAN.—Do you mean that the seals follow the herring and the salmon into what we would call the interior waters along the coast?

Mr. ROBINSON.—Into the sounds and up the inlets, etc.—Barclay Sound for instance. Barclay Sound is on Vancouver Island. I am not quite certain of its exact location.

Senator MORGAN.—On the inside or outside?

Mr. ROBINSON.—Barclay Sound is on the inside. Think it is on the eastern coast of Vancouver.

Senator MORGAN.—In the Georgian Channel.

Mr. ROBINSON.—I am not quite certain of the position of Barclay Sound. I know it is a sound on the coast of Vancouver Island.

Senator MORGAN.—To go into the Straits of Georgia the seals would have to go through some of the openings in the Pacific Ocean, the Straits of Fuca, or some other opening.

Mr. ROBINSON.—Yes; they would have to go through the straits of Juan de Fuca. I have the location now. I was wrong. It is in the southwest corner of Vancouver Island, opening on the ocean.

The PRESIDENT.—Do the seals ever go in fresh water?

Mr. ROBINSON.—I have never heard of it. I have seen them in brackish water. I cannot say more than that. It may be known to some of the members of the Tribunal that the water in the St. Lawrence is brackish until you get a considerable distance down.

Senator MORGAN.—Do you refer to the fur-seal?

Mr. ROBINSON.—Oh no; the hair seals. There are no fur-seals on the Atlantic Coast that I ever heard of.

The PRESIDENT.—Do they require salt water?

Mr. ROBINSON.—No; they do not require salt water. I think that in the Zoological gardens they are not always supplied with it; and I have seen them high enough up to say that they go into water that is not quite salt. That is the hair seals. I do not know anything about the fur-seals.

We have all this evidence collected; and it is given by 27 white hunters and a large number of Indian hunters—I should think some 30 or 40. Several Indians refer to the fur-seals following the herring into the bays. All this evidence is to be found in Appendix II to the British Counter-Case; and I shall read to the Tribunal some few extracts to show the character of it. I have it all here and I could give it to the Tribunal either verbally, the whole of it, or put it in writing, as would be most convenient, so that all of it would be before them. I do not think it would be wise, or that there would be any sufficient object in it for me to detain you while I read all the affidavits. I merely mean to read one or two or half a dozen as specimens of the whole; and then I can either give you the names of the others or give you the printed list, whichever may be found most convenient.

For example, at page 43 of that Counter Case there is a man named Petit, one of the white hunters. He says:

> I have seen seals opened and find in them salmon, cod, and sometimes squid.

At the same page, another man, Abner Sinclair, speaks to the same effect:

> Seals eat cod, salmon and squid; more squid than either of the others from what I have seen.

A man named Luke McGrath, of the city of Victoria, at page 46, now a hunter in the "Dora Diewind", a sealing schooner, says:

> I have found that seals eat salmon principally along the coast, but squid principally in Behring Sea; cod also.

Then Ralph Starrat, at page 48 of the British Counter Case, says:

> The principal food of the seal along the coast is salmon; but they eat any kind of fish.

The PRESIDENT.—Is that in the Counter Case or the Appendix?

Mr. ROBINSON.—It is in the Appendix to the Counter Case, Volume II. You will find that our Appendix to the Counter Case is arranged in this way, may say, Mr. President: From page 43 to 139

is "Testimony relating to pelagic sealing"; but the affidavits relate to a great many points in regard to pelagic sealing: That is to say, each man will speak on several points in connection with it.

Then at the beginning of that Appendix to the Counter Case we have got a collection of the evidence on different points of that kind; but I do not think we have it collected there with regard to the food. I have it in a separate analysis of my own here in print with regard to the food; and that I can give to the Tribunal if it would be convenient for them. But they are collected very much from pages 43 onward. In point of fact, all these affidavits of white hunters are to be found from pages 43 to 98. Then come the Indian hunters, which extend from 140 to 159 or 160.

James McRae, at page 48 says:

Codfish, salmon and squid are the principal food of the seals.

R. O. Lavender, page 54, says:

Salmon, squid and a small black fish.

Two of them speak of a fish "like a mackerel." What that may be, I do not know.

Otto Buchholz, at page 58 says:

The food of seals on the coast is mostly salmon. On the Asiatic side mostly squid.

That is one of the persons I refer to for that statement.

Herman R. Smith, at page 61, says the same thing:

Over there (that is to say, Copper Islands he is speaking of) the seals get only squid and devil fish; largely the latter.

I suppose there are no salmon on that coast.

Andrew Mathison, at page 69 says:

Seals on the southern coast feed principally on salmon; up north on salmon, and squid.

Another man says p. 80:

Shrimps and insects.

John Christian, at page 86 says:

On the coast I have noticed more salmon food in the stomachs of seals than anything else; but in Behring Sea it is mostly squid.

Walter Heay, at page 87 says the same thing:

On the coast the seals eat principally salmon; in Behring Sea mostly squid.

Then there are a large number of Indian hunters, who I suppose would be confined to the eastern coast.

An Indian, Schoultwick, at page 142 of that same Appendix. These Indians speak more particularly of herring, and I account for that in this way: The Indians as a rule know more of the coast sealing. That is to say, they are more accustomed to hunt within shorter distances of the coast, and their knowledge of seals is more confined to the migration of the seals along the coast and the interior waters. Of course many of them are hunters on the schooners; but they have a more intimate knowledge probably of the coast sealing. This man was living on the coast of Vancouver Island in Barclay Sound, and he says:

The seals are always most numerous when the herring are most plentiful, which they follow as far as the head of Barclay Sound, and we kill them there every year if the bait go that far.

That is to say, if the herrings go in as far, as I understand it, as up to the head of the Sound.

Senator MORGAN.—Within the three mile limit?

Mr. ROBINSON.—I do not know; but if they go to the head of the sound I suppose it would be within the three mile limit.

At page 146, a man named Charles Hayuks of Barclay Sound says:

When the herring are plentiful and come in close there are plenty of seals, but when the herring are scarce, or do not come in close, we do not get many.

At page 147, a man named Oquaghu says:

Seals come into Barclay Sound every year in the month of January, and are more plentiful some years than others, and years the seals are plentiful have noticed that the herring were very plentiful near shore. Seals are as plentiful as ever but they do not come in so close to shore now.

A great many of the Indians say that the guns have frightened them away from the shore.

Then another man, at page 149, says:

They are most plentiful along the coast and in the Sound when the herring come in to spawn, and the more the fish the more the seal. All kinds of fish that are got on the coast are found in their stomachs.

Senator MORGAN.—Does this testimony show that the herring do come in to spawn on that coast?

Mr. ROBINSON.—No; I do not remember that it does, Mr. Senator. I do not know that it does. That is a fact, of course, that could be readily ascertained. One of these witnesses speaks of the seals following the herring in when they go to spawn. Others speak of their following them in January; but I do not know anything about that.

Senator MORGAN.—On the Atlantic coast, you say it is quite different?

Mr. ROBINSON.—I think it is. The Atlantic Coast and the Pacific coast have different seasons.

At page 153 another Indian speaks to the same effect:

Years herring are plentiful the seals are very plentiful.

Another Indian, at page 159, says:

Seals come into the Barclay Sound every year, and I have seen them right in here where the boat is anchored and saw them in here last spring. Some years ago they were very plentiful; years the herring are very plentiful in the sound and along the coast seals are very plentiful, and come in close to land.

The PRESIDENT.—From all these affidavits it would appear that the quantity of seals does not merely depend upon the quantity of destruction, but also upon the quantity of food?

Mr. ROBINSON.—It must to some extent. All wild animals will be found very much to depend upon the quantity of the food that they follow. If we are to talk of natural history, there are mysterious things which cannot be accounted for by us. But I can say at least that the herring are unusually plentiful every few years and scarce in other years. One year they will be unusually plentiful. No one knows where they come from; and the next year there may be very few, and you will not find another influx, so to speak, for several years.

The PRESIDENT.—Would that be an annual migration?

Mr. ROBINSON.—No; they are not migratory fish at all, according to the knowledge of my friends. I have seen years, for example, when black squirrels have been swarming. They would swarm one year but the next year they would be very scarce.

The PRESIDENT.—We all know that about cockchafers.

Mr. ROBINSON.—It may be the same with regard to cockchafers. I am not familiar with that; but there is no doubt that in some years the herring are more plentiful than in others; and when they are more numerous, the seals collect there in greater numbers than at other times. That is all I can say about it.

I read from page 157. At page 162 there is the statement of an Indian, confirmed by eleven others, and he speaks in the same way:

Some years there are more than others, and years that the herring are plentiful there are more seals.

Several of these witnesses refer very particularly to the fur-seals following the herrings into the bays. One of them, at page 140, refers to that particularly. He says:

About Christmas time they come into Barclay Sound on this coast among the islands there, and are seen in great numbers following the run of herring. I have noticed that when the herring is plentiful on the Halibut Banks the seals are more numerous than when the feed is scarce.

Then a man at page 158 speaks of it in the same way:

Seals are first seen along this coast about Christmas time, and are seen till about the time the berries begin to get ripe—

I do not know what connection there is between the two.

but we only hunt them for about three months from the shore, when we go away in the schooners. I have always seen the big ones come first, and towards the middle of the season the smaller ones come. They are always most plentiful when the herring are thickest, and I have seen them following the herring right in here, where we now are—in Ucluelet Harbour—in the night time, and have gone out and killed them.

I think there is only one other worth referring to at p. 159, who says:

Some years they were very plentiful; years the herrings are very plentiful in the Sound and along the coast seals are very plentiful, and come in close to land.

That is all the evidence out of 70 or 80 affidavits that it is necessary now to call the attention of the Tribunal to; but I can give you a written list of them all if the Tribunal should desire to have it; I believe they prove what there can be no ground to dispute, that the seals live largely upon herring and largely upon salmon, that when the herring and salmon are most plentiful the seals are most plentiful, and that they follow the schools up into the inner waters and into the sounds, wherever the herring go. That I think would be the result of all the testimony.

The next topic that I desire to touch upon is the question of waste at sea by pelagic sealing. That has an indirect bearing, no doubt, upon this question of regulations. It may be said that if there is undue waste or undue loss by the system of pelagic sealing, the question of regulations would be affected by that, and would be framed as far as possible in view of it. The United States have asserted very strongly that something like 66 per cent, I think, of the seals that are shot at sea are lost. That we venture to say is utterly and wholly wrong, some twenty times an exaggeration, and I propose to speak of the evidence which we say shows that. Of course there is no question in the world that the pursuit of every wild animal—I do not care what it is or where it is—is accompanied by a certain amount of loss. It is inherent in the very nature of every kind of hunting, every kind of pursuit of wild animals. I do not know any that is free from it. My learned friend, Mr. Coudert, at part 4, page 699, exerted his powers of ridicule and sarcasm upon the sentence in our Commissioners Report in which they say this:

The accusation of butchery laid against those who take the seals on shore cannot be brought, this pelagic method of killing the seal, which is really *hunting* as distinguished from *slaughter*, in which the animal has what may be described as a *fair sporting chance for its life.*

Mr. Coudert, after considering that question during lunch time, said on the reconvening of the Tribunal:

When this learned Tribunal adjourned for the recess, I had just read extracts from the British Commissioners' Report charging butchery against those who killed the seals on the islands, and expressing the opinion that the slaughter which I have described at sea was sportsmanlike in its character, in that it gave the animal a fair sporting chance for its life. I could not do justice to that by any comment, and I leave it for the Tribunal without any criticism.

I should infer from this that my learned friend Mr. Coudert, however wide his sympathies may be—and I have no doubt they are very wide—has no sort of sympathy with what is called the instinct of sport. His idea would seem to be that humanity is the one thing to be considered. He would approve, for instance, of a man who would sneak up to a pheasant, get within 20 yards of it, and shoot it out of a tree, or would shoot it on the ground. He would think that much more humane, and much more to be encouraged, than the method of the ordinary sportsman, who shoots on the wing and does give the bird a chance for its life. In fact, he would agree with that person of whom I have read a story, that when he was about to shoot a partridge running in a field, his friend who was with him put his gun up, and said: "Surely you are not going to shoot a bird in that way?" His answer was: "No; I will wait until it stops"; and that was his idea of fair sport.

We maintain that pelagic sealing gives the seal a fair chance for its life and is in that respect preferable. There is one thing very certain: if you were to propose to nine men out of ten to go and join you in the system by which the seals are killed on the Pribilof Islands, namely, by knocking them on the head with a club when they are looking in your face they would probably turn from you with no small degree of contempt; while if you were to propose to the same men to go out in the open sea in boats and kill the seals by shooting them, they would think that a sort of thing to be encouraged, and would have no hesitation in joining you. Mr. Coudert can have none of the sportsman's instinct, or he would not have thought the remark of the British Commissioners so very ridiculous. It so happens that at the end of one of these books, vol. IV, App. British Case, there is an article from an American newspaper, quoting from the London Times, in which they take the same ground, that it is butchery, and unsportsmanlike, and that it ought to be condemned on that ground. Every one on the other side of the water knows of the complaints that are made in regard to the method of pursuing deer. They are driven into *a*, where the pursuers paddle out to them in a boat and put a bullet through their heads. I think very much may be said against this system on *that but it ground, that is* a matter of taste. I infer only from my learned friend, Mr. Coudert's conception of it, that he has not much sympathy or feeling for the instinct of sport.

Pelagic sealing is spoken of in several places as having been destructive elsewhere, and I do not stop now to read extracts, because I think the time has come when we may take it for granted that the Tribunal have in mind a great deal that has been read and repeated to them in these affidavits. In the Case of our friends, I find it often stated that pelagic sealing is in part responsible for the extermination of the seals in the southern hemisphere and elsewhere. As a matter of fact, pelagic sealing has never exterminated seals anywhere.

Lord HANNEN.—Has not that been very fully gone into?

Mr. ROBINSON.—It has perhaps been very fully gone into, and I am not going into it any more. All that I was going to do was to point out the sentence of the British Commissioners, paragraph 65, I think it is,

where the fact is stated. I say this pelagic sealing has never been practised elsewhere and never was known until it was practised in these waters.

Now the statement in the United States Case at pages 195 and 196 is that 66 per cent are lost out of every 100 killed, and the probability is the percentage is even more. In the British Commissioners' Report, paragraph 627, you will find a table given, and I think the better way of treating this is not to trouble you with special affidavits, but to give the result of the analysis which we have here of a large number of affidavits, putting together some 50 or 60 affidavits of different people who speak to the number they have killed. We have aggregated that number, and we have 9,337 skins taken and a loss of 4 per cent. That is in the table appended to paragraph 627 of the British Commissioners' Report.

If you look at the British Counter Case Appendix, vol. 2, page 6, Mr. President, you will see a further table. Of course, between the preparation of the Case and Counter Case we were collecting evidence, and there is a large list of affidavits by different people tabulated in this way, giving the names of the deponents, names of the vessels they belonged to, the number of skins obtained, and the number of seals lost, the percentage, and the different years, with remarks.

Now in those affidavits we have 39,879 skins taken, and we add to that the 9,000 odd in the previous table, making together 49,216, or say 50,000; with *a up* of 1,602, making a loss of 3–2 per cent. From page 7 to page 10, we have some 80 witnesses, or an abstract rather of their testimony, which forms the evidence which has been tabulated and analysed, as I have mentioned. It would seem to be impossible to present that kind of evidence more satisfactorily. There is no doubt evidence on the other side both ways; that is to say, witnesses called on behalf of the United States who say that they have lost a good many, and witnesses called on behalf of the United States who say that they have lost but very few, and you must collect from the evidence *pro* and *con* in that matter what you may take to be the reasonable inference from it, taken as a whole. That is treated of again in the British Counter Case, pages 191 to 193, in the British Commissioners' Report at paragraphs 616 to 626, and in the Counter Case at pages 158 to 159. I do not think, though it is tempting to read some of these affidavits, that it would be worth while to detain the Tribunal while I call attention to any of the details. The net result is that we have tabulated them all, and have the statements of different people of the number they state, by actual count, amounting to 10,000. We have the statement of the number that those people swear to as having lost, and it comes to 3–2 per cent. That is the total, if you recollect on the first 9,000 odd. Then we get 39,000 more, making close on 50,000 which was a total of 3–2 per cent.

Now I desire to call attention to the affidavit of Mr. Behlow in the Appendix to the United States Case, on another question, volume 2, page 402, which we think must certainly be a mistake. I call attention to it more particularly because it seems worth while to call attention to anything that this gentleman says, with regard to which we conceive him to be inaccurate, for he is a gentleman who has made no less than 11 or 12 affidavits on behalf of the United States. His statement is that he examined 1,342 salted fur-seal skins, *ex* schooner "Emma and Louisa" from the North Pacific Ocean; and he undertakes to tell you what kind each skin belonged to, that is to say, whether pup, male, or female, and to give an analysis of the whole.

Now in answer to that, if you will turn to volume 2 of the appendix to our Counter Case, page 173, you will find first the affidavit of Mr. *Belodo*, who says he is the managing owner of that vessel; that she did bring the 1,342 skins, that he was there when Mr. Behlow came to examine them; that he only lifted a few up from the pile, not exceeding five or six, and looked at them, and then went upstairs; and the time that they were down there would not be more than five minutes. On the same page, 173, that is followed by an affidavit by Mr. Barber, who was a clerk in the employ of Mr. Ladd, the owner of the sealing vessel "Emma and Louisa"; that she returned on a certain day,

Having on board 1,342 skins, and these skins were delivered at the place of business of the afore mentioned C. D. Ladd on the 12th day of the same month.

In the forenoon of the day following, that is, on the 13th July, Charles I. Behlow of this city, came into the store of the aforesaid C. D. Ladd and asked to see the skins which had been brought from the vessel "Emma and Louisa", and I took him to the basement where they were all lying in one pile in the elevator. I made no objection to his seeing the skins, as I had been informed that all seal-skins of the pelagic catch had to undergo inspection before any disposition could be made of them, and at the same time had been told that the firm of H. Liebs and Co. had been appointed by the Government the inspectors for that purpose, and I knew the said Charles I. Behlow as a member of the firm of H. Liebs and Co. for many years.

On being shown the skins which, as I before stated, were all in one pile, the said Charles I. Behlow remarked to me that he had to say he had seen them, for it did not pay to inspect them as he was only paid 5 dollars a day for doing it; and on saying this picked up and looked at a few skins, not exceeding 5 in all, but gave even these no such scrutiny as would be required to determine the sex. The whole time the said Charles I. Behlow was so employed did not exceed five minutes.

Then we have also the affidavit of Mr. Wester at pages 175 and 176, and Mr. Wester is the Captain of the vessel. He describes Mr. Behlow's visit, and then he says that the skins were immediately trucked up; the time occupied was not more than 3 1/2 hours in landing, and it was impossible to tell what the sex was—it was only a matter of guess work. Then in case it should be said that 3 1/2 hours was sufficient, we refer the Tribunal to the evidence of Mr. Phelan, at page 518 of the United States Case Appendix, volume 2, who says he spent 4 days going through a lot of skins, working about 7 hours a day, so that if even 3 1/2 hours is supposed to be the time, it is impossible that Mr. Behlow could have examined these skins with any such attention as would enable him to give the information he professes to give. This is material when we find the same deponent making 11 or 12 affidavits.

Then the only other point that I desire now to touch upon is the question of raids. That is a material question from two views—material as regards the protection given to the Islands, and material as testing the opinion of those who have spoken on the part of the United States, and who have said that in their judgment raids are too unimportant to play any part in the question they are considering.

Mr. Stanley Brown, in volume 2 of the Appendix to the United States Case, at page 18, says with regard to that:

The statistics which I have examined, as well as all the inquiries made, show that in the raids upon the rookeries themselves by marauders the loss of seal life has been too unimportant to play any part in the destruction of the breeding grounds. The inhospitable shores, the exposure of the islands to surf, the unfavourable climatic conditions, as well as the presence of the natives and white men, will always prevent raids upon the islands from ever being frequent or effective.

Now, we have not treated that question in our Report in that way at all. The British Commissioners Report is in an entirely different sense, and gives evidence which, in our view, it is impossible to disregard or to displace by mere assertion of opinion or as even the result of enquiry.

The chapter on "Raids" is to be found in the British Commissioners' Report, paragraphs 727 to 770. I do not propose to read from that at all at any length; but you will find at paragraph 762 they say:

The evils of raiding are very great. It is by far the most destructive form of sealing, combining all the disadvantages and none of the advantages of the other forms. The killing is chiefly of breeding females, as the raiders cannot penetrate far enough inland to obtain the young bachelors or immature females.

And so on.

We ourselves noticed the great ease with which, under present arrangements, raids might be successfully carried out.

—and they give particulars of that.

For instance, we steamed into the anchorage of the settlement at St. Paul, close past the Zapadnie and Tolstoi rookeries, one bright moonlight night (14th September), and moved early the next morning by daylight round the Garbotch and Reef rookeries to the other landing, without our presence becoming known in any way at the settlement.

In short they say under present regulations and arrangements, there is no difficulty or danger whatever to vessels raiding along shore any night, or in any of the frequent fogs at several of the best rookeries, except when a revenue-cruizer chances to be close by, an occasional occurrence well known to every marauding schooner.

If you look at the British Counter Case, the Appendix Volume I, pages 153 to 154, you will find Mr. Macoun's report on that subject, which is very definite and specific. He says:

During the months of July and August, 1892, no guard was stationed upon any rookery on either island with the exception of North-east Point on St. Paul Island, and Zapadnie on St. George. Polavina and Zapadnie Rookeries on the former island, and Great East and Starry Arteel Rookeries on the latter, were left without a guard of any kind, and three of these four rookeries are known to have been raided in recent years.

On the 16th of July I walked on St. George Island from the village to Zapadnie Rookery with the two natives who were going to relieve the watchmen there. One was a young man about 20 years of age, the other a boy of 12 or 13. When we reached the guard-house, I found that the guards to be relieved were an elderly man with but one arm, and a boy of about the same age as the one referred to above. I was afterwards told by Dr. Noyes, the manager on St. George Island for the Company, that when the killing season was at its height this one-armed man was the only guard kept at Zapadnie. He was unable to assist in any way at the killings, so was employed as a watchman.

Two or three men were kept at North-East Point, St. Paul Island, and this place is connected with the village by a telephone line. Early in August, 1892, however, the receiver or transmitter at one end of the line got out of order, and it was rendered useless as a means of communication between these places.

At the time of my departure from the island on the 12th of September it was still in this condition, and there was apparently no prospect of its being repaired before next spring. More than two hours would be required by the watchmen to reach the village were a raid to be made at North-east Point, and the same time to return with assistance. This, with the time consumed in rousing the people at the village, would give any raiders ample opportunity to do their work, as I have been assured by several men who have actually raided the islands that four hours is the time usually required to make a successful raid, so that North-east Point was in 1892 practically without protection.

Polavina rookery is 5 miles from either the village or North-east Point, and any night the wind served, or even on foggy days, raids might be made there and nothing be known of them at the village. Although Zapadnie rookery can be seen from the village, and on this account is supposed to be safe, it was at this very place that the skins taken by the crew of the "Borealis", late in 1891, were procured. I was told by one of the men engaged in the raid that, at the time it was made, a revenue-cutter was lying at anchor near the village, and less than 2 miles from the rookery, that the night was clear,—so clear that they could see from the schooner not only the lights of the cutter, but the vessel itself. They were desperate, however, and sailed in close to the rookery, landed, and secured 400 skins without being seen or heard.

While on St. Paul Island, in 1892, three different rookeries were named to me as the one on which this particular raid was made. Nothing was known of it on the islands until the arrival of the revenue cutters the next spring, and the officers on these vessels had heard of it through the raiders themselves.

While in Victoria, British Columbia, in May, two of the schooner "Challenge" gave me particulars of the raid made on Great-East Rookery, St. George Island, late in 1891; and when on St. George Island in July, I asked Dr. Noyes, the Manager of the North American Commercial Company on that Island, for an account of the raid. He told me that the morning after the raid, a native who had been collecting wood came in with the report that there were dead seals on Great East Rookery, but that no vessel was in sight. The number of seals killed was not ascertained, as they did not wish to disturb those still on the ground. A man was sent across the island, and came back with word that a schooner was anchored in Garden Cove. Guards were put on all the Rookeries, but no further attempt at raiding was made, and nothing more was seen of the vessel.

Then:

In this connexion, Mr. Wardman, United States Treasury Agent on the Pribilof Islands for several years, may be quoted: "I asked a man one day if he would shoot if we took after a pirate, and he said he would not. It was only with great persuasion I could get him to pull me off in a boat. It is no use putting guns into their hands. I asked him why he would not shoot, and he said he did not want to kill a man. They are very cowardly."

Then they go on to point out:

Even were native guards placed on every rookery on both islands, they would thus afford no real protection against raids. They might be bribed by the raiders, or might neglect their duties and not patrol the rookeries on dark or foggy nights, and even were good watch kept and the presence of raiders detected they would be useless, and at the most would but hurry to the village for help. It is assumed that if a revenue-cutter were kept at each island, no further protection would be necessary.

and so on.

All the revenue-cutters habitually come to anchor at night-fall when near the islands, if possible at the village, so that practically the whole island excepting that part of it near the village is open to the raiders. Vessels are known to have anchored to the northward of St. Paul Island for weeks, running in to the island at night to kill seals on the rookeries. A proper guard stationed at each rookery might prevent such raids, but a vessel anchored at the village can never do so.

Then in the British Counter Case, Appendix, vol. 2, pages 41 and 42 the Tribunal will find an analysis of all the affidavits relating to raids made on the Pribilof Islands.

They are 8 in number, and particulars are given as to the raids they themselves are aware of.

On one occasion.

(A Mr. Folger says):

We once ran in too near the village and saw a cutter there and went away again, but we found the coast clear the next night and got about 500 skins. We could see the light at the village.

We knew very well the natives did not keep a good watch. We got about 2,000 skins that year off the Islands.

And John Kraft speaks of the same thing. I am not certain if Mr. Folger is a citizen of the United States. I think so, however, for the simple reason that it is stated in several places there is no instance of a Canadian vessel having raided the Islands and, therefore, I assume these persons like Mr. Folger are American citizens. I find, that he is so described at p. 88.

Then we have very direct evidence of the manner in which these raids were carried out, in the British Counter Case page 297; and in the Appendix to that Counter Case volume I page 154 and page 293 specific evidence is given as regards a great many raids which have occurred

and which have not been mentioned by the Treasury Agents. I will conclude this, I think, by referring to the evidence of one Lenard, a Witness called for the United States, or one of the deponents whose affidavit they give in the Appendix to the United States Case, volume 2, page 217; and I refer to him to show the consequence of such raids more than any thing else. I am not quite certain for what reason they put in his evidence.

He says:

I reside at Belkofsky, Alaska Territory. I have been a sea-otter hunter for forty years, and have occasionally raided the Russian seal islands. When on a raid we would watch for a favorable opportunity to make a landing and then kill male and female fur-seals indiscriminately. Probably for every 500 marketable skins secured double that number of pups were destroyed.

That is practically what from the habits of the seals and what we have read you would imagine. These men proceed with no care, and they probably create a stampede among the older animals, and the pups are killed in that way and in others.

Senator MORGAN.—That leads me to enquire, Mr. Robinson, for the purpose of obtaining information, if it is correct that the rookeries occupy the sea front, and in rear of those come the older seals and holluschickie. Is that correct?

Mr. ROBINSON.—No, I think not. I think the holluschickie haul out on a different place.

Senator MORGAN.—Some of the witnesses speak of open ways being left. That is what I meant.

Mr. ROBINSON.—That is seals on the rookeries. You will see in the evidence that the holluschickie haul out at a different place.

Senator MORGAN.—Entirely independent?

Mr. ROBINSON—Yes, because the old seals will not let them come near the breeding section, so to speak.

Mr. CARTER.—That error ought not to be allowed to go uncorrected, because it is in evidence that the holluschickie haul out in the rear of the rookeries as well.

Sir RICHARD WEBSTER.—But not in the same place.

Mr. ROBINSON.—Perhaps Mr. Carter is right in this way: what I mean to say is this, that they land at a different place. I do not say they do not spread round and get to the rear.

Senator MORGAN.—There are witnesses who speak of open ways for the seals to pass through.

Mr. ROBINSON.—I do not think that is connected with the holluschickie, but I will not put my recollection, where I do not recollect clearly, against anything that Mr. Carter thinks is correct. Mr. Folger, in the Appendix to the British Counter Case, Volume 2, page 89, refers to one of these occasions when he is speaking of a raid.

He says:

I was at Robben Reef at the time the Alaska Commercial Company sent a vessel there—the "Leon", Captain Blair—to destroy the seals. They had tried their best to protect the island, but we were too much for them. We had the guard in our pay, and when the "Leon", which had been sent there to guard the place would go away, lights would be put out and we would come over from Cape Patience, where we had men on the look-out constantly, or if we got impatient the fastest sealer in the fleet would go there and be chased by the "Leon" (a sailing vessel), and the others would make the raid; we worked together, and the schooners would divide up.

It is hardly necessary to suggest in conclusion that it is only natural to suppose these raids must have been frequent. The price then paid for seal skins was an object of temptation. The natives are not to be depended upon, and the United States cared little about it; it was a

matter for the lessees; and unless a very strict guard was kept, this locality, with constant thick fogs and a class of men not by any means timid in their operations of that kind, would be almost certain to be subject to raids. Given natives to watch, and given white men to want what the natives are watching, the white man will get what he wants. Those three points I have now dealt with.

The PRESIDENT.—Any others we shall be happy to hear you urge in the morning.

[Adjourned till Wednesday the 21st June at 11.30 o'clock A. M.]

FORTY-SECOND DAY, JUNE 21ST, 1893.

Sir RICHARD WEBSTER.—Mr. President, before my learned friend Mr. Robinson begins, you will remember that when the Attorney General communicated to you the fact of a communication having been made from the Foreign Office as to the Russian seizures, objection was taken by my learned friend, Mr. Phelps, that the communication was not public or official; and you were good enough to call attention, when I was addressing you, to the fact that however much you might, of course, believe what we had stated in the matter it was not a public document and, therefore, reference could not be made to it properly. I told you I had no doubt the Papers would be presented to Parliament in a few days. They were presented yesterday, and I have handed my learned friend copies. Copies will be supplied to the Tribunal, though we have not sufficient at present I believe, and I may state on page 5,——

Mr. CARTER.—One moment; do you read the contents as evidence? Because if so, we object to the reception of this matter. The ground of our objection, Sir, is that it is new evidence designed to prove some new fact or other; and, therefore, does not come within provisions of the Treaty, that the only way in which the Treaty contemplates evidence is to be received by this Tribunal is that it should be incorporated in the Case or Counter Case, and that this, therefore, is not admissible.

The PRESIDENT.—I would say that we do not admit fresh evidence, and it is not as evidence that we would like to take it. I do not believe it is within our proper power, however, to prevent anybody from reading anything that may be read in the newspapers of what happened that day or the day before. We simply take it as a newspaper communication; I do not say more than that.

Mr. CARTER.—With great deference, Sir,——

The PRESIDENT.—Do you object to that?

Mr. CARTER.—I should think it was in the power of this Tribunal to prevent the reading of any newspaper in evidence, or to prevent the reading of anything which is intended to bring before the Tribunal any additional fact (that is, evidence) in reference to what may have been done between Russia and Great Britain in the way of adjustment or settlement of a controversy. Our learned friends on the other side have a way, which we are deprived of, by which they can bring those matters before the Tribunal.

If the objection is that they are of an unofficial character, they have an easy method by simply laying them in the first instance before the British House of Parliament now in Session, and having them printed to give them an apparently official character. But the objection is to the admission of new evidence, and lies as well to evidence of any official character as any other. The impropriety, as I conceive it, is this; it brings a fact partially before the attention of the Tribunal; and how can we complete the record, and how can we furnish the additional information that is necessary for its proper understanding unless we have access to all the documents, which we have not? How do we know what oral interviews may have been indulged in by the Representatives of Great Britain and Russia in this matter? How do we

know what other facts never disclosed by these records may have transpired? It is permitting one party to lay before the Tribunal a partial view when it is not in our power to complete the view. That is the objection, and it is a serious one; and that is the reason why it was provided by the Treaty that the place, and the only place, in which evidence was to be contained is the Case and Counter Case. It is, on that that we ground our objection; that we ought not to be put to the trouble, that we ought not to be put to the injustice, that we ought not to be put to the inequality, of having a partial fact laid before this Tribunal when we have had no opportunity and can have none to lay before the Tribunal such other additional facts as may belong to it and which must be regarded in order to arrive at a proper understanding.

Sir RICHARD WEBSTER.—I do not intend to answer the observations that have been made, Mr. President, except to remind you of what the circumstances are. In the United States Case they asserted that Russia had claimed to exercise the jurisdiction of seizing ships outside the three-mile limit. That correspondence between Russia and Great Britain respecting the *modus vivendi* has already been admitted, and, not only admitted, but referred to by Mr. Phelps, he stating he intended to argue upon it.

The PRESIDENT.—Facts already incorporated in the documents before Tribunal, which is not quite the same thing.

Sir RICHARD WEBSTER.—These were papers not incorporated in the documents. It was a Parliamentary paper handed in last week and to which Mr. Phelps referred, saying he intended to rely upon it. We informed the United States that at no time had Russia made this claim the Attorney General made a statement to the Tribunal publicly with reference to the fact that Russia had agreed to indemnify ships that had not been inside the territorial waters, and that statement being made, Mr. Phelps got up and said—he will endorse what I say—that in the previous debate in the House of Lords, not a week ago, Lord Rosebery had not referred to it—was he at liberty to refer to that debate and I said Yes, to any documents public or otherwise supporting his contention Mr. Phelps might refer. You interposed, Sir, and said I had gone too far and it was only public documents that ought to be referred to, and called attention to the fact that the telegram to the Attorney General was in the nature of a private document and not public I then informed you, Sir, feeling the weight of what you said, I would ascertain if the papers were going to be presented to Parliament.

They have been presented to Parliament, and I, having given copies to my learned friends, make good my promise by presenting them before the Tribunal. I say that it is not new evidence at all. It is simply to show the Tribunal the real facts respecting the action of Russia.

Lord HANNEN.—Suppose Russia are under some terms with reference to compensation, has that any bearing on the enquiry we are going into.

Sir RICHARD WEBSTER.—It has no bearing at all.

Lord HANNEN.—Then why go into it?

Sir RICHARD WEBSTER.—If your Lordship will pardon me except the United States have introduced into their argument a statement that Russia has claimed to exercise these rights outside territorial waters. It is not a question of bargain at all. I told the Court before, the matter was investigated by a special commission, and the documents will show what the actual claims of Russia have been in regard to the matter. It is only to prevent the Tribunal being under a misapprehension in consequence of an inadvertent statement made the United States.

The PRESIDENT.—I must say, as there has been an objection raised, that I cannot allow you to proceed without a consultation with my colleagues in a matter which I, for myself, should have conceived was open to every body; but, perhaps, that is because I am more accustomed to the French procedure which enables you to bring before the judges any new fact that may arise, with the object of having before them everything that has taken place. As the history of the world goes on, every day brings forth new facts, and we do not shut our eyes to what goes on, but then the rules of English Common Law, such as are enforced both in England and America, are more severe, as concerns evidence, than anything I have been accustomed to even in theory.

Mr. CARTER.—Which rules have been adopted in the Treaty and the preparation of these Cases.

Sir RICHARD WEBSTER.—I may be allowed to say, Mr. President, that I should not have kept faith with the Tribunal had I not brought these documents before them, because in reply to the statement made by yourself, with the concurrence, as I understood, of the other members of the Court, that the public documents passing between the countries can be referred to, I said recognizing that if the papers were made public and were presented to Parliament, they should be laid before the Tribunal; and therefore I should not have kept faith if I had not presented them.

The PRESIDENT.—We thank you for your intention, Sir Richard, which is very loyal indeed, but we must consult between ourselves before we allow you to go any further.

Sir RICHARD WEBSTER.—Might I point out that the United States cannot be allowed to found an argument that Russia has taken this action, without our being in a position to put the true facts before you.

The PRESIDENT.—Of course, that is a thing we shall consider.

The Tribunal then consulted for a short time.

The PRESIDENT.—I wish personally to explain what I meant when I spoke of newspapers. I meant to say, of course, it is not the reading of a newspaper which might be the embodying of an argument, but I want to say, as men are naturally brought to take heed of all public events which take place and such public events, we considered, are in the reach of everybody, and that we might take heed of them. Of course, if we were to hear by some commotion of nature that all the seals had disappeared off the face of the globe, it would be strange if we could not take heed of it.

Mr. CARTER.—Our own law contemplates a certain amount of information which the Court might take note of, but not so far as you go.

The PRESIDENT.—It was only with reference to such an observation of that kind, and I should not like to be misunderstood with regard to it. So far as regards this particular case, after consideration, we do not deem that it would be fit, at the present moment, to stop the proceedings of this Tribunal, and we therefore will raise no objection to hearing the document; but we will reserve to ourselves to consider whether we will take it as evidence or reject it, when we have more leisure to deliberate about the matter. It is only under that reserve now that we will ask Sir Richard Webster to proceed with his reading.

Sir RICHARD WEBSTER.—I quite understand, Mr. President, that it was subject to all reserves of that kind. I will read nothing but official documents. On the 29th May (10th June) 1893, Mons. Chichkine writes from St. Petersbourg—and my learned friends have copies of this:

I have had the honour to receive the notes which your Excellency was so good as to address to the Imperial Ministry, dated the 17th (29th) November, and the 4th (16th) and 9th (21st) December 1892, relative to the seizure in Behring Sea of Canadian schooners and fishing boats by Russian cruisers.

A special Commission having been appointed by Imperial Decree to examine into the circumstances under which those seizures were made, the Imperial Ministry did not fail to lay before it the depositions (affidavits) of the captains and crews of the schooners concerned which accompanied the above-mentioned notes.

In reply to these communications I make it my duty, M. l'Ambassadeur, to transmit to you the two reports inclosed.

Your Excellency will observe from the perusal of the first of these documents that it deals with the assertions of the Canadian crews as to the privations alleged to have been inflicted upon them at Petropavlovsk. In the opinion of the Imperial Government the Commission has fully elucidated this matter. Nevertheless, if the interested parties consider it necessary, they have the power to avail themselves of the regular course provided by law in order to present their claims either to the superior naval authorities or to the proper Tribunal.

Then follow two paragraphs about the treatment of the captain and crew that are not material:

The second of the accompanying reports contains a detailed examination of the circumstances which accompanied the seizure of the schooners and their boats. In considering the legality of the captures effected by the Commanders of the Russian cruisers and by the District Governor of the Commander Islands, the Commission was guided by a principle the justice and equity of which cannot be disputed. It recognized as lawful seizures of all vessels whose boats were seen or captured in our territorial waters. It cannot, indeed, be denied, that the boats constitute, juridically, an appendage of the schooner to which they belong. Consequently their seizure in territorial waters renders the capture of the vessels, of which they in some respects form part, perfectly legal.

If it were otherwise, a schooner could with impunity pursue seals on the coasts by sending her boats there, and thus infringe the inviolability of territorial waters, although herself remaining outside the said waters. Taking this view of the matter, the Commission recognized the legality of the seizure of the schooner "Marie", "Rosie Olsen", "Carmolite" and "Vancouver Belle" but was unable to do so in the case of the seizure of the schooners "Willie McGowan" and "Ariel". There can, however, be no question as to the serious nature of the indications which induce the Commanders of our cruizers to institute a search on board these last-named vessels.

The "Willie McGowan", took flight as soon as she had sighted the Russian cruiser, and she refused to heave-to at the summons of the "Zabiaca".

Though the Commander of the Russian cruizer did not, see the boats of the "Willie McGowan" engaged in the illegal pursuit of seals in our territorial waters, he had been informed of it by the inhabitants of the coast. The search revealed the presence on board of implements used for sealing on the coast, as well as of seventy-six skins, of which sixty-nine had been taken from female animals, who must therefore have been killed close to the shore; 90 per cent of the skins found on board the "Ariel" had probably also been taken from nursing females, and belonged to seals caught in Russian territorial waters.

The importance of this evidence was fully recognized by the Commission. It was not considered, however, as amounting to positive proof such as would justify the seizure of the schooners, owing to the absence of an essential condition: their boats had not been sighted in actual pursuit of seals in Russian waters.

In bringing what precedes to your knowledge, M. l'Ambassadeur, I consider it my duty to inform you that, in view of the findings of the Commission as described above, the Imperial Government would not refuse to proceed to an assessment of the indemnity to be paid to the owners of the schooners "Willie McGowan" and "Ariel".

I need not trouble the Court by reading the other papers which are before the Tribunal. They are the detailed particulars going into each ship, and all the papers are at my learned friends disposal.

The PRESIDENT.—But we do not admit that the papers are before the Court, because they are not here.

Sir RICHARD WEBSTER.—I understood they were before you, Mr. President, or I would not have begun to read it. I was not aware they had not been handed in and I apologize.

Lord HANNEN.—It was quite right not to hand them in till it was decided they were admissible.

Sir RICHARD WEBSTER.—Except that I understood that the President rather complained of my statement that they were not before the Court. I thought they were on the table or I would have waited. I do not wish to read the last page. It is the same thing, and, again, any passage in the papers will be at the disposal of my learned friends. There is nothing to qualify what I said in any way.

The PRESIDENT.—Now, Mr. Robinson, will you proceed?

Mr. ROBINSON.—Sir, there is one matter as to which I wish to give a reference in order to clear up what has been a misconception. There has been a misapprehension with regard to a letter of Mr. Tupper, to which Mr. Coudert referred at pages 692 and 693, and he founded an argument upon it, and read it with considerable emphasis as against my learned friend. He spoke of it as the *Couronne de l'Edifice*, but he read only a letter at pages 90 and 91 of N° 3 (1892), volume 3 of the Appendix to the British Case. He was asked to read a letter at page 105, and he said he would do so if he had time. Unfortunately, it escaped his attention, and he did not read it. That shows exactly what was Mr. Tupper's meaning, and does not at all bear the construction which my learned friend, with considerable triumph, pointed to as bearing against the view that we were advancing on a question that was practically more a matter of damages than anything else.

> The Government is of the opinion that the total cessation of sealing in Behring's Sea will greatly enhance the value of the produce of the coast fishery, and does not anticipate that British sealers will suffer to any great extent by exclusion from Behring's Sea.

Now, if you will turn to page 105 of that same part, in the same Appendix, you will see that in a letter by Mr. Tupper of the 19th of September some eight days later, to the Victoria Sealers' Association, he says:

> I will, however, repeat that Her Majesty's Government has intimated that, while they incline to the belief that the closure of Behring's Sea to all sealing operations *both on land and at sea* will so enhance the value of the catch that the prices realized will compensate the sealers for their loss of the Behring's Sea catch, they will be prepared to consider claims to recompense where it can be shown that actual loss has accrued by reason of the legislation under review.

This shows that the cessation Mr. Tupper was referring to was the cessation on the Islands and elsewhere, and not the cessation merely at sea; and that the argument assumed to be founded on his letter is not well founded.

I have done now with all the matters of detail connected with this question of Regulations which I desired to refer to, and I wish only to refer to two other general matters before proceeding to those few remarks which I desire to make with regard to the subject of Regulations in general. These are the conduct of Canada in this matter, and the conduct of the Commissioners.

The conduct of Canada has been made the subject of very severe stricture by my learned friend, Mr. Phelps, in the United States Argument on pages 177 to 179; and you will also find that Mr. Blaine in his despatch of the 29th of May, 1890, volume I, Appendix to the United States Case, page 212, and in the same volume at page 218, complains I may almost say bitterly of the conduct of Great Britain, practically because Great Britain had taken the advice of Canada and consulted the interests of Canada in this matter, and had not concluded an arrangement for a close time, as to which there was some misunderstanding between my learned friend, Mr. Phelps, and Lord Salisbury.

Now I venture to say, in the first place, that Canada did simply what it was her duty to do; and, in the second place, that for what she did is entitled, not to the strictures of the United States, but to their thanks. What Canada did, and what they complain of, as you will see by reference to the pages I have just given the reference to—177 to 179—is that she prevented the arrangement for that close time being consummated. Mr. Phelps says at page 177:

> It will be seen from the correspondence between the governments of Great Britain and the United States, printed in the Appendix to the Case of the United States, that a convention between the two countries was virtually agreed upon as early as 1887, with the full concurrence of Russia, under which pelagic sealing in Behring Sea would have been prohibited between April 15 and October 1 or November 1 in each year, and that the consummation of this agreement was only prevented by the refusal of the Canadian Government to assent to it. The propriety and necessity of such a repression was not doubted, either by the United States, Great Britain, or Russia. This convention, if completed, would have fallen far short both of the just right and the necessity of the United States in respect of the protection of the seals, as is now made apparent,

and so on. And then they speak of the conduct of Russia, which we have been speaking of just now, and they say

> Instead of taking its defence into its own hands, the Government of the United States has refrained from the exercise of that right, has submitted itself to the judgment of this Tribunal, and has agreed to abide the result. Its controversy is only nominally with Great Britain, whose sentiment and whose interest concur in this matter with those of the United States. It is really with a province of Great Britain, not amenable to her control, with which the United States Government has no diplomatic relations, and can not deal independently.

And so on.

Now let us see for a moment what was the proposition that was made, and what were the circumstances at the time. The seizures had taken place; and Great Britain had protested against them, and had set out the grounds on which she conceived those seizures to be illegal. You will find Lord Salisbury's despatch in the third volume of the British Appendix at page 88. The trial, as you will remember, had taken place sometime in the autumn of 1887. The brief is to be found at page 112; and Mr. Bayard on the 7th February, 1888, had written a letter suggesting this close time from the 15th April to the 1st October or November.

On the 17th February, 1888, Mr. Phelps had submitted that letter of Mr. Bayard to Lord Salisbury, and the misunderstanding arose between these two gentlemen as to the question whether Lord Salisbury had really definitely assented to such a close time or not. Now what was the close time that was suggested? You remember that the controversy had been as to the right of Great Britain to take seals in Behring Sea. We had been disputing about this matter, and, substantially, the proposition was this: "You have been taking seals in Behring Sea; you assert that you have an equal right there with us; we assert that your action there is illegal; let us settle it all amicably by providing that you shall never go into Behring Sea while there are any seals there to be taken". Now I venture to think, as the learned Attorney General said, this is not a proposition which either Mr. Bayard or Mr. Phelps, if they had known the facts of seal life, would have advanced, because practically it was a suggestion to give up everything Great Britain had been contending for from the beginning. As we all know now, to say that no vessel shall enter Behring Sea and that there shall be a close time for seals between the 15th April and the 1st October is practically to say that there shall be no sealing there at all, because there is no other time except between those dates when you can take seals there.

Then that letter was submitted by Mr. Phelps, as you will find at page 181 of the Appendix to which I have been referring, with these observations, as they are reported by Lord Salisbury to Sir Lionel West:

The United States Minister called to-day at the Foreign Office and spoke to me about the question of the protection of the fur seals in Behring's Sea.

He said that the difficulties in regard to the seal fisheries in that sea were mainly connected with the question of the close time, and that no attempt had been made by the authorities of the United States to stop the fishing there of any vessels at the time when it was legitimate.

Surely that contains a plain inference that there was in Behring Sea a legitimate and an illegitimate time, that is to say, other than the one proposed: in other words, that there was a time when it was legitimate to take seals in Behring Sea and there was a time when it was illegitimate to take seals in Behring Sea; and I suppose that Mr. Phelps thought that those were the facts.

Now what was done upon that was that this offer, as is usual and right, was referred to the Colony which had the most important interest in the matter by the Foreign and Colonial Office in London. On the 3rd March, as appears at p. 182, the Foreign Office transmitted to the Colonial Office a copy of Mr. Bayard's letter. Lord Knutsford, having received that, on the 12th March says, p. 183:

It will be necessary to consult the Canadian Government on the proposal to establish a close time for seals in Behring Sea before expressing a final opinion upon it.

Showing that neither he nor Lord Salisbury at that time had the knowledge of seal life which was necessary in order to enable them to see the effect of this proposal.

Mr. PHELPS.—What was the letter you referred to?

Mr. ROBINSON.—It is shewn it was submitted, and Lord Knutsford at page 183 says it will be necessary to consult:

Mr. PHELPS.—That is Mr. Bramston's letter I believe, on behalf of Lord Knutsford.

Mr. ROBINSON.—Yes, he was one of the Secretaries.

In reply, to your letter of the 3rd instant, I am directed by Lord Knutsford to acquaint you for the information of the Marquis of Salisbury, that he thinks it will be necessary to consult the Canadian Government on the proposal to establish a close time for seals in Behring Sea before expressing a final opinion upon it.

A copy of your letter and its inclosure has been forwarded to the Governor General.

That was Lord Lansdowne at the time

with a view to obtaining an expression of the views of his Ministers upon it.

I am to add that Lord Knutsford is inclined to view the proposal of the United States Government with favour, but that he presumes that it will be made quite clear, should Her Majesty's Government assent to it, etc.

The rest is not very material and does not affect the subject matter of the controversy. Then, the proposal having been sent out in accordance with that view, on the 7th July, 1888, referring to page 213 of that same Appendix, the Government of Canada, having considered it, sent a memorandum expressing their view upon it, and citing the despatch or conversation referred to by Lord Salisbury. In this memorandum it is said.

This clearly implies that Lord Salisbury had been led by the United States minister to believe that there is a fixed close and open season for the killing of seals in Behring's Sea which is common to all vessels of all nationalities, and that during the open season these may legitimately and without molestation pursue the business of catching seals.

The facts of the case appear to be that within the limits of the Territory of Alaska, which by the United States contention includes the waters of Behring's Sea as far westward as a line drawn from a point in Behring's Straits South-west to the merid-

ian of longitude 173° west, the killing of fur bearing animals, amongst which the seal is included, is prohibited by law; that repeated warnings to this effect have been given by the United States authorities, and that vessels both of Canada and the United States have within the past two years been seized and condemned for killing seals within these waters. It also appears that in the Islands of St. George and St. Paul during the months of June, July, September and October of each year, the United States Government allows the slaughter of seals to the number of 100,000 by certain citizens of that country known as the Alaska Commercial Company, for which monopoly the United States Government is paid a yearly revenue of more than 300,000 dollars. At no season of the year, and to no other persons whatever, is it permitted to kill a single seal within what is claimed as the limits of the Territory of Alaska. It is evident, therefore, that there is no part of the year when citizens of any country, with the sole exception of the Alaska Commercial Company, can legitimately kill seals within the limits named; and when Mr. Phelps stated to Lord Salisbury that "no attempt had been made by the authorities of the United States to stop the fishing there of any vessels at the time when it was legitimate" his statement should be read in conjunction with the fact that there is no period of the year when it is legitimate for any vessels to fish for seals in the waters of Alaska?

And then, after citing some other things to show the killing on the Islands, it proceeds to say:

The time proposed as close months deserves consideration, viz., from the 15th April to the 1st November. For all practical purposes, so far as Canadian Sealers are concerned, it might as well read from the 1st January to the 31st December.

And then it explains the reason, and says:

But the United States Government propose to allow seals to be killed by their own citizens on the rookeries, the only places where they haul out in Alaska, during June, July, September, and October, four of the months of the proposed close season. The result would be that while all others would be prevented from killing a seal in Behring's Sea, the United States would possess a complete monopoly, and the effect would be to render infinitely more valuable and maintain in perpetuity the seal fisheries of the North Pacific for the sole benefit of the United States.

It is to be noted that the area proposed by Mr. Bayard to be affected by the close season virtually covers the whole portion of the Behring's Sea in which the exclusive right of sealing has, during 1886 and 1887, been practically maintained by the United States Government.

To this is added a part of the North Pacific Ocean, north of 50° of north latitude, and which commands the approach of the seals to the passes leading into Behring's Sea. By the adoption of this area and close season the United States would gain, by consent, what she has for two years held in defiance of international law and the protests of Great Britain and Canada.

And while this area would be held closed to all operations except to those of her own sealers on the Pribilof Islands, the north-west coast of North America up to the 50th parallel of north latitude and the sealing areas on the north-eastern coast of Asia would be open to her as before.

Then:

It is to be borne in mind that Canada's interest in this industry is a vital and important one, that she has had a very large capital remuneratively employed in it, and that while by the proposed plan the other Powers chiefly interested have their compensations Canada has none. To her it would mean ruin so far as the sealing industry is concerned.

Upon that, of course, when received by England any idea of accepting that proposal was rejected.

Now I ask again is there any reason why the United States should find fault with the course Canada took? Is there not on the contrary every reason to say that Canada rather deserves their thanks, because, if that proposal had been made with knowledge of the facts, could it have been termed a fair proposal? If they had said to England, or proposed to England, instead of putting it in that form, what it really and inevitably means,—"Let us settle this matter amicably by providing that you shall never seal in Behring Sea at all",—the proposal would have been a mockery. That is all that Canada did and pointed out. It is for this that Canada seems to be blamed as she has been;

and I therefore desire, so far as it is within my power, to present the facts before this Tribunal, to endeavor to set it right. It does seem strange to one of us to find the United States complaining of the conduct of England in consulting and deferring to the wishes of one of her most important colonies; and certainly the existence of their own great country is not a very appropriate illustration of the advisability of a different course on the part of the Mother Country. If she had known long ago what she knows now, and had been as well advised as now, the circumstances might have been very different; and from whatever source such a reproach might come, it does not seem to us to come very appropriately from my learned friends.

Now I wish to say a word as to the conduct of the Commissioners, which has been also very severely commented upon in different places by my learned friend.

Senator MORGAN.—I do not know whether it is stated any where in the papers, Mr. Robinson, but, if so, can you give us the date of the first official act of Canada in claiming the right for her citizens of pelagic hunting in Behring Sea?

Mr. ROBINSON.—From the beginning, in 1886.

Senator MORGAN.—I wanted to know the beginning.

Mr. ROBINSON.—The moment that the vessels were seized.

Senator MORGAN.—Not before that?

Mr. ROBINSON.—No there was no object in asserting it till somebody interfered with it. As you know, we had been fishing in Behring Sea for some years. If I recollect rightly the first vessel entered Behring Sea to seal in 1884.

Senator MORGAN.—The first Canadian vessel?

Mr. ROBINSON.—The first Canadian vessel.

Senator MORGAN.—Can you inform me if the vessel went in under a fishing license?

Mr. ROBINSON.—No, I cannot.

Senator MORGAN.—You do not know what the clearance was?

Mr. ROBINSON.—No, but I should have thought not.

Mr. TUPPER.—There was no license required.

Senator MORGAN.—But there is a clearance in every case that states the destination of the ship.

Mr. ROBINSON.—Yes, I should suppose there would be.

Lord HANNEN.—Are vessels of that size required to make any such declaration? I should doubt it.

Mr. ROBINSON.—I cannot say.

Sir JOHN THOMPSON.—They do not make any declaration, I think.

Mr. TUPPER.—They clear for any place, and they would say "North Pacific".

Sir RICHARD WEBSTER.—Simply where they are going to sail for; that is all.

Senator MORGAN.—But every ship that carries a national flag is bound to have a destination when it leaves a port.

Mr. ROBINSON.—I find in a memorandum that I have made that pelagic sealing began in Washington Territory and British Columbia in 1869. There were only four schooners, in 1878 to 1879, and the first vessel that sealed in Behring Sea was the "Mary Evans" in 1884. That is the first British vessel. The "San Diego" was there before, but she was American. Those are the facts.

Now, with regard the conduct of the Commissioners, as to which I desire to say a few words, I wish to speak of that for this reason; those Gentlemen have been subjected to very severe strictures, and I venture

to say strictures absolutely and utterly unfounded. I do not know that it would be possible to speak in terms more severe of Gentlemen pretending to any character in the scientific world, or to make charges which, if true, would be more certain to ruin their reputation and standing there.

Now, let us see if I am justified in saying that? In the first place, I refer to the United States Argument, at pages 72 to 75, concerning the Reports of the Commissioners; but I do not desire to read more than is necessary; and I will, therefore, only read from page 74.

Such being the view which the Commissioners of Great Britain took of their own functions, their report should be regarded as partaking of the same character, and such it appears to be upon inspection. There is in no part of it any purpose discernible to discover and reveal the true cause which is operating to diminish the numbers of the fur-seal, and to indicate the remedy, if any, which science points out. It is apparent throughout the report that its authors conceived themselves to be *charged with the defense* of the Canadian interest in pelagic sealing; and it consequently openly exhibits the character of a labored apology for that interest, particularly designed to minimize its destructive tendency, and to support a claim for its continued prosecution. This being its distinguishing feature, it is, with great respect, submitted that any weight to be allowed to it as evidence should be confined to the *statements of facts* which fell under the observation of its authors, that these should be regarded as the utterances of unimpeachable witnesses of the highest character, testifying, however, under a strong bias; and that the opinions and reasonings set forth in it should be treated with the attention which is usually accorded to the arguments of counsel, but as having no value whatever as *evidence*.

Then, at page 206 of the same Argument, they are spoken of in these terms:

The Commissioners of Great Britain have in their report studiously avoided the real problem which it was their business to solve. That problem, according to their own view, was to devise some scheme of pelagic sealing which would preserve that pursuit, and at the same time not be fatally destructive to the herd of seals.

Then it proceeds to say to what they should have done; and then:

The fundamental error of the Commissioners of Great Britain, as of all who either deceive themselves or attempt to deceive others, with the illusion that it is possible to permit in any degree the indiscriminate pursuit of a species of animals like the seals, so eagerly sought, so slow in increase and so defenseless against attack, and at the same time to preserve the race, consists in assuming that the teachings of nature can be replaced by the cheap devices of man. The first and only business of those who, like the Commissioners, were charged with the duty of ascertaining and declaring what measures were *necessary* for the preservation of this animal, was to calmly inquire what the laws of nature were, and conform to them unhesitatingly. It would then have been seen by them that *no capture whatever* of such animals should be allowed except capture *regulated* in conformity with natural laws; and that all *unregulated* capture was necessarily destructive, and a crime.

Then they go on to say:

This error is not imputable to ignorance on the part of the Commissioners. It does not arise from any failure to take notice of the nature and habits of the animal. There is, indeed, in their report an avoidance, which appears to be industrious, of any special inquiry into the nature and habits of seals, with the view of ascertaining and reporting for the information of this Tribunal whether they really belong to that class of animals which are the fit subjects of property, or that of which ownership cannot be predicated, and which can consequently be protected against excessive sacrifice only by the rough and ineffective expedient of game laws; but, nevertheless, they fully admit that perfectly effective regulation of capture is easily possible at the breeding places and there alone.

They say:

It is, moreover, equally clear from the known facts, that efficient protection is much more easily afforded on the breeding islands than at sea. The control of the number of seals killed on shore might easily be made absolute, and, as the area of the breeding islands is small, it should not be difficult to completely safeguard these from raiding by outsiders and from other illegal acts.

That is a quotation from what the Commissioners say.

What *is* the avowed ground (the word "is" being in italics) aside from the assumed right of individuals to carry on pelagic sealing, upon which these Commissioners felt themselves not warranted in yielding to the decisive facts thus stated by them, and declaring that a perfect protection would be given to the seals by simply prohibiting capture at sea? It is, to shortly sum it up, that the power thus possessed by the occupants of the breeding places has been abused in the past, and probably will be in the future, by an excessive slaughter of young males.

In other words, these gentlemen ask, as if it was something they were unable to comprehend, the Commissioners having found it was easy for those who own the Islands to kill the seals under efficient protection, what was there to prevent them from simply saying that the rights of all others, if they had any, should be taken from them, and all the rights over the seals given entirely to those who own the Islands? They did not take the same view of rights as my learned friends, that the ownership of these Islands gave them a right to slaughter the whole race of seals and take away all rights from others. That is a matter which my learned friends, with the one sided view which they take of their case, seem unable to comprehend. Then they go on to say:

We are reluctant to make any reference to *motives;* but, where opinions are, as in this case, *made* evidence, the question of good faith is necessarily relevant. Why is it that these Commissioners have chosen to disregard the plain dictates of reason and natural laws which they were bound to accept, and to recommend some cheap devices in their place, when they so clearly perceived those dictates? We are not permitted to think that this was in *conscious* violation of duty, if any other explanation is possible. The only apology we can find comes from the fact, clearly apparent upon nearly every page of their report, that the *predominating* interest which they conceived themselves bound to regard was not the preservation of the seals, but the protection of the Canadian sealers.

And then they proceed somewhat further with what I need hardly continue to read. Now if the Tribunal will turn to page 251 of the same argument it speaks of the "wild assertion" of the commissioners about some other matters, and say that nothing can justify it. Let us see what that "wild assertion" is.

It would seem from the testimony in the Case quite certain that the pregnant females would lose their young if they were on the point of delivery when reaching the islands, and if driven off by man, or by accident, they certainly would be exposed to great danger while looking for another home, even assuming this exercise of sound judgment *in extremis* to be probable. Such difficulties do not, however, trouble the Commissioners, who are satisfied that if they were to be debarred from reaching the islands now chiefly resorted to for breeding purposes, they would speedily seek out other places upon which to give birth to their young. (Report of British Commissioners, Sec. 28.)

This is based upon "experience recorded elsewhere." We fail to find any such recorded experience which would justify so wild an assertion.

I venture to ask any Member of this Tribunal, has any one the slightest doubt that if you were to line the Pribilof Islands with men and prevent the seals landing there, the seals would not as soon as possible find another place to haul out upon? Does anybody believe that if the Pribilof Islands were submerged to-morrow the seal race would disappear? Our Commissioners did not believe it; and yet it is asked what can justify their wild assertion that the seals would find some other place?

Then, if you will turn to my learned friend, Mr. Carter's, oral argument, he says, after speaking of what he conceives to be the course they took, at page 421:

That is a pretty decisive fact. In what category does it put them? Why they are partisans, just right off, just as much as my friends on the other side are here. They are defending from the beginning to the end the interests of pelagic sealing.

How does that operate upon the confidence which this Tribunal ought to place on their conclusions? It is entirely destructive,—that is the simple matter of it,—except as to a very limited extent. Where these gentlemen speak and testify as to facts which they say fell under their personal observation, of course they are to be treated as witnesses of those facts of the most unimpeachable character, but, nevertheless, witnesses acting under a strong bias. Where, on the other hand, they proceed to give us their opinions as to what the facts are, their opinions are to be discarded altogether as being the opinions not of impartial but of partial observers, which are like the opinions of Counsel, and differ in no respects from them.

At page 595, Mr. Coudert speaks in much the same way. He says they seem to assume that:

There was a rivalry between the Canadian sealers on the one side and the United States on the other; and that it was their patriotic duty to support pelagic sealing whatever might be the results to the seals. My friend Mr. Carter has already alluded to this, and spoken upon it, and, in answer to a question from the learned President, has stated that he attaches no importance whatever to statements in the report.

In another sense I attach a great deal of importance to the statements in the report whenever they may be construed as admissions. I say it now, and I say it frankly, I consider these gentlemen as hostile witnesses; I am at liberty to dispute their statements whenever they are against the side which I am advocating,—of course not statements of what they have seen themselves, for I accept their assurances without hesitation; but whenever they testify against me I have a right to dispute it; and whenever they testify in my favour I have a right to accept it as an admission; and when I am able to produce an admission from the British Commissioners that squarely, flatly, emphatically covers a certain point, I shall consider my function fulfilled as to that, and assume that my friends on the other side are satisfied with that kind of evidence. And this derives an additional force from the fact that it is a part of the case. These gentlemen have received the very high honour (and their zeal, if nothing else, entitled them to it) of having their report incorporated into their Country's Case, and treated as part of it.

At another page of that learned gentleman's argument, page 638, he makes use of perhaps as strong an observation as could well be used, in its result and effect, when he says:

They are our seals. That is conceded in this way: the British Commissioners themselves say (and, as I have said, the value of a concession from them is enormous, I conceive it to be more valuable than one from my learned friend, Sir Charles Russell).

In other words, these gentlemen were absolutely blinded by prejudice, and incapable of performing their duty or of understanding what their duty was.

Now, let us turn to page 229 of the printed Argument, which is, if possible, even stronger. The Report is spoken of in these terms:

But they have presented a great mass of statements of their own, evidently based in a great measure upon conjecture, much of it directly traceable to manifest partiality, and marked, to a singular degree, by the exhibition of prejudice against the one party and bias in favor of the other. The extent to which this has been carried must, in the eyes of all impartial persons, deprive it of all value as evidence.

Now, at some place, they speak of their own Commissioners by contrast.

Mr. CARTER.—I think that is on page 75.

Mr. ROBINSON.—Yes; I am much obliged. It is on page 75. They speak of their own Commissioners, and contrast the view which they took of their duty with the view the British Commissioners took. It says:

They are not, indeed, to be presumed to be less interested in behalf of their own nation than their associates on the side of Great Britain.

Mr. CARTER.—You should begin a little earlier if you want the whole of it.

Mr. ROBINSON.—I will begin where you like.

Their conception, however, of the duties imposed upon them was widely different. They regarded themselves as called upon simply to ascertain the truth, whatever it might be, concerning seal life in Behring Sea, and the measures necessary for its proper protection and preservation. This seemed to them essentially a scientific inquiry, and not to embrace any consideration of national rights, or of the freedom of seas,—a class of questions which they would probably have deemed themselves ill qualified to solve. They are not, indeed, to be presumed to be less interested in behalf of their own nation than their associates on the side of Great Britain; but as they did not conceive themselves charged with the duty of protecting a supposed national interest, they could remember that Science has no native country, and that they could not defend themselves, either in their own eyes or before their fellows of the scientific world, if they had allowed the temptations of patriotism to swerve them from the interests of truth.

In other words, that is a charge, almost as plain as if made directly, that while that was the character of their Commissioners, the British Commissioners cannot defend themselves in their own eyes, or in the eyes of the scientific world, because they have allowed the temptations of patriotism to swerve them from the interests of truth.

Now, it is worth while to see what our Commissioners were charged to do, and what they did do. One thing is plain: these charges are either well-founded or ill-founded. If there is a shadow of foundation for them, these Commissioners ought not to have been appointed; they were unfit for their duty; they misunderstood their duty, and ought not to be employed again, because their patriotism, or temperament, or bias, unfits them for any such functions.

Now you will find on looking into the Commissioners' Report,—and I do not know that I need trouble the Tribunal with reading any of it because I do not understand it to be charged against them that they have reported upon any subject that they were not instructed to report upon: in other words, I do not understand—at all events, I understood Mr. Carter to say, that that was not what he did charge when we thought that he made such an accusation—that they have reported upon what they were not instructed to report upon, or have expressed opinions connected with seal-life which they were not authorized to express,—you will find, at page V of the first part, of their Report, they are directed to enquire

What international arrangements, if any, are necessary between Great Britain and the United States, and Russia, or any other Power, for the purpose of preserving the fur-seal race in Behring Sea from extermination?

Her Majesty's Government have proposed to the United States that the investigation should be conducted by a Commission to consist of four experts, of whom two shall be nominated by each Government, and a Chairman, who shall be nominated by Arbitrators.

If the Government of the United States agree to this proposal, you will be the Delegates who will represent Great Britain in the Commission.

But, in the meanwhile, it is desirable that you should at once commence your examination of the question, and that for that purpose you should proceed as soon as you conveniently can to Vancouver, from whence the Lords Commissioners of the Admiralty have been requested to provide for your conveyance to the various sealing grounds and other places which it may be expedient for you to visit.

Application has been made to the United States Government for permission for you to visit the seal islands under their jurisdiction, and a similar request will be addressed to the Russian Government in the event of your finding it necessary to visit the Commander Islands and other Russian sealing grounds.

Your attention should be particularly devoted to ascertaining—

1. The actual facts as regards the alleged serious diminution of seal life on the Pribilof Islands, the date at which such diminution began, the rate of its progress, and any previous instance of a similar occurrence.

2. The causes of such diminution; whether, and to what extent, it is attributable

(*a.*) To a migration of the seals to other rookeries.

(*b.*) To the method of killing pursued on the islands themselves.

(*c.*) To the increase of sealing upon the high seas, and the manner in which it is pursued.

I need scarcely remind you that your investigation should be carried on with strict impartiality, that you should neglect no sources of information which may be likely to assist you in arriving at a sound conclusion, and that great care should be taken to sift the evidence that is brought before you.

Now, they certainly had no right to misapprehend their duty. They were expressly directed to conduct this investigation with great impartiality. The charge is that they have conducted it with nothing but partiality, have left out of consideration every duty which impartiality made incumbent upon them, and have been guided only by their bias and partiality.

Then I do not know that there is anything else, except that in their report they say their main object was to enquire what international arrangements were necessary, and describe the course they took and what they did.

Now let us see what it is they reported upon. Having been directed to go to the Islands, and the United States having concurred in that, and having offered all facilities for their making that investigation, we must assume that they came to their conclusions either honestly or dishonestly. If in their judgment, as is the fact, they found the methods pursued on the islands were defective, and were, to a large extent, accountable for the present defective or injurious state of the seal herd, were they to say so, or were they not. Would it have been consistent with their duty if, having enquired and found certain defects, they omitted to report them? If for example, they came to the conclusion (and, as my learned friend put it to you, it was the simplest thing in the world) all you have to do is to stop killing on the islands or improve your methods there, or stop pelagic sealing on the other hand, and then the seals will not be destroyed, they might have said that after this investigation, or indeed without any investigation at all; but was that their duty? When they found you could kill on the islands with discrimination was it their duty to say, and is it incomprehensible that they should not say at once: "As they discriminate on the islands, and can kill with care what they choose to kill, you should, therefore, take away such rights as have been exercised from time immemorial to kill at sea." If not, they have performed the exact duty they were sent to perform. As the commissioners have in another place said, undoubtedly the best remedy would be to prohibit all killing; but they were aware of the existence of these rival interests, and that it was that which led to this enquiry, and they could not but be aware that the object of their being sent to make the investigation was, as a matter of fact, that these rival interests had come to a certain extent in collision, and the difficulty was to reconcile them.

For that purpose they had to enquire into these matters, and report the conclusion they had arrived at. I do not desire to say more than to ask the Tribunal to refer to, as I have no doubt they will, and read the respective reports, on both sides. I desire the Commissioners to be judged, not by what any person may say or think of them. I do not speak of their character, because personal knowledge and personal feeling might influence what one might say; but I speak of their work as it is presented to this Tribunal, and I ask the Tribunal to judge of them by their work. I will venture to say this. I am glad indeed that on our side there has been no such tone adopted or charges made. I am willing to say that I think we should not have been justified in making them; but I assert that we have, at least, as much justification for making such charges against the United States Commissioners as they have for making them against the Commissioners of Great Britain; and

I will endeavor to justify that by a Comparison of the two reports. What have our Commissioners reported? They have gone there and examined, and reported not only the facts they believed to be true, but the evidence upon which they came to those conclusions; and when they found it impossible to come to a positive conclusion, I think the Tribunal will bear me out in saying, they have indicated those matters upon which, in their judgment, the evidence is yet so incomplete that doubt must remain.

Now what is it that the United States Commissioners have done? As a matter of fact our Commissioners spent more time in the enquiry, and paid three visits to the islands, and visited the Commander Islands, and, on the whole, made a longer investigation, though whether it was more thorough or not must depend on the judgment of those who read the detailed Report of what they did given by each body; but the United States Commissioners, having investigated, have expressed positive opinions on almost every thing, and positive opinions on nothing in a direction that is not in favor of the United States. I do not charge them with being blinded by bias, patriotism, or prejudice, I simply point to facts. They say, for example, in the United States Case, page 362:

> The assumption that driving is seriously injurious to the reproductive powers of the male is doubtless unfounded, being quite contrary to the declared belief of Captain Webster and other sealers of long experience. Against every assertion of this kind it is only necessary to put the fact that there is no evidence of a lack of virility on the rookeries,

and so on.

Now then I ask—you have heard all the evidence—is that a Report that carries value in the eyes of an impartial Tribunal? What becomes of the statement of Messrs. Lavender, Elliott, Palmer and Goff, who all state to the contrary from personal observation. I do not deny there are others who differ from them; I simply say that is a fact upon which there is the strongest body of evidence in favor of the contrary conclusion, which the United States Commissioners utterly ignore, when they say that any idea of that sort is doubtless unfounded, and that the United States, or rather their lessees on the island, are not in any way in fault. Our Commissioners having investigated for themselves, and being supported by the evidence of these United States officials, come to the contrary conclusion, and I venture to submit they are more supported by the weight of evidence.

Now the United States Commissioners in another place say that to propose a radius of ten, thirty, or even fifty miles gives you the impression that such a proposition was not intended to be seriously considered. Now is that a reasonable, fair, unprejudiced statement, when we know that this idea began by the proposition of a zone from the United States—and when we know it is supported by the adoption of a zone on the part of Russia, which probably has the best information in the world on the subject? Is it reasonable or sensible to say—is it unprejudiced to say—that such a proposition, when made, could not have been intended to have been seriously treated? I do not care whether it is adopted or not—I say the proposition when made is entitled to the serious consideration of any reasonable unprejudiced man, and I say nothing more. Then they say that if there is not to be a repetition with regard to these rookeries of what has happened with the rookeries of the Southern Ocean and of other localities where seals once flourished, measures adequate to the existing evil, heroic if need be, must be adopted. Now I venture to say they knew very little, or they would

have known that there never has been in the southern ocean the extermination of any seal herd by pelagic sealing, and that there was no chance of there being a repetition of what had happened in the Southern Ocean, except by raids on the islands. It was either want of information, I say, or forgetfulness; but if this was inaccurate information, does it show proper care? They say:

> In short, if we do not wish the history of the fur-seal in Behring Sea to be a repetition of that of the rookeries of the southern Ocean and of other localities where seals once flourished, measures adequate to the existing evil, heroic, if need be, must be adopted.

And then they repeat what must have been told by others about the rookeries of the south seas. Now we know perfectly well how those rookeries were destroyed, and we know there is no possibility of there being a repetition of what had happened there, in the case of the Pribilof Islands. Then they say at page 378:

> It may be worth while to add that the suggestion has been made that the decrease in the number of seals is due to piratical raids upon the islands themselves during the breeding season.
>
> While it is unquestionably true that such raids have occasionally occurred during the past and that some skins have been obtained in that way, the number of these is so trifling in comparison with the annual pelagic catch as not to affect in any way the question under consideration. It is also difficult for one familiar with the rookeries and the habits of the seal to conceive of a raid being made without its becoming known to the officers in charge of the operations upon the islands. The "raid theory", therefore may be dismissed as unworthy, in our judgment, of serious consideration.

I do not desire to accept that as anything but the best judgment they could form, and an honest judgment, but I say the judgment is of very little value unless it is supported by evidence, and unless the evidence is produced; because our Commissioners coming to a contrary conclusion have produced before the Tribunal the evidence upon which they found it, and unless that evidence is displaced it entirely supports such conclusion. Whether it is right or wrong I am not here to say, nor does it make any difference. I am not discussing it in that light just now. It was read to the Tribunal yesterday, and they will form their judgment upon it.

That is the nature then, of the Report of the United States Commissioners. And I ask, am I not justified in saying simply, that upon subjects which are still in doubt—upon subjects which nobody can speak of as positively known—upon subjects, I will say, as to which the weight of evidence is on some of them at least the other way—they have adopted positive conclusions every one of which is in favor of the contentions of their own country? Now I do not charge them with bias, I do not charge them with being blinded by prejudice, but I say we have least as good a right to charge them and as strong evidence to found such a charge upon as exists for charge made by my learned friends against our Commissioners. I am very glad then that we have abstained from any such charge against gentlemen whom we believe to be entitled to respect. In the same way of Mr. Stanley Brown I will only say I have not a shadow of doubt that Mr. Stanley Brown went there, observed to the best of his ability, and reported to the best of his judgment. But I have equally no doubt that upon some subjects it is impossible (if evidence is to carry any weight whatever), for his conclusions to be adopted. Mr. Stanley Brown, for instance says, upon the question of coition at sea, he believes it to be impossible. As a matter of fact we have the evidence of 38 witnesses who speak of it from actual observation under circumstances which make it impossible

that they could have been mistaken. I do not charge Mr. Stanley Brown, under those circumstances, with having a bias, or anything else—I simply say he has made a mistake.

If the Tribunal desires the reference to that evidence, it is in Appendix II of the British Counter Case, page 33, where the names of all the 38 witnesses, and the pages at which their Affidavits are to be found, are all given. And we find that Mr. McIntyre also thinks the thing impossible; and another gentleman, Mr. Morton I think, also says he believes it to be impossible. All I have to say is, it is absolutely impossible, now, to read the evidence on that subject and entertain such a belief unless you can come to the conclusion that all these witnesses—38 in number—were either mistaken in what they profess to have seen with their own eyes, or for some reason did not state the truth. In the same way I may mention another subject upon which Mr. Stanley Brown expresses a positive opinion. I mention it because to my own apprehension, apart from having heard anything about it, it seems beyond question. I believe any one would have said—and would consider now, in view of what has been said about it by either side, that the assertion of the females and others feeding at sea when living on the rookeries is absolutely incomprehensible. I refer to a letter which is to be found in the Appendix to the Supplementary Report, from Mr. Bartlett of the Zoological Gardens. I make no apology for this, because I do not understand that what is to be found in the Supplementary Report, though it may be practically only a statement of some Natural History matter—the habits of Deer and so on, which you can read for yourselves anywhere—is not that sort of knowledge which my friends in another part of their case have described as "Barn-Yard knowledge," and, in another place, as knowledge which it is plain every intelligent man can acquire and make use of for himself. Mr. Bartlett tells us that the excrement of these animals is similar to that of dogs. Now we know as a fact that it is absolutely impossible to keep, any where, twenty dogs in one place for a fortnight without making the place intolerable.

There must have been 100,000 seals living on an island not of an absorbent soil, to say the least—I do not think it would make any difference whether it was or not. Is it conceivable to any one that these seals were feeding regularly? Is the thing possible? One knows from general experience and actual knowledge that with the smallest bird even it is customary to follow them by such signs. You cannot, if passing through a sheep field where they have been kept for a few days or a fortnight, pass through it without knowing they have been there. You cannot go through a field where there have been a number of rabbits without seeing that they have been there beyond doubt. Is there any possibility of conceiving, if these seals are properly described by Mr. Bartley—and there is no reason to doubt his statement in that respect, seeing who he is and where it comes from—is it possible for any man to conceive they do feed? If they do feed, I submit to any unprejudiced judgment from any point of view, that it must be a matter of common observation and ordinary common knowledge. The only explanation of what is known to be the fact it seems to me must be that they do not take in the food which otherwise you would find signs of beyond all question on the place where they were living, huddling together in thousands, tens of thousands, if not hundreds of thousands.

So much then for our Commissioners. We make no charge ourselves, and regret that our friends have felt it their duty to make charges of this sort, which it is no use minimising, which it is no use mitigating,

which it is no use trying to explain. If true, they are discreditable and disgraceful to the men against whom my learned friends have brought them; and of those charges I will only say that while there is no reasonable ground for suggesting them on either side, there is at least as much on our side as on that of the United States.

Then I proceed to the question of Regulations, speaking of it generally, and I do not propose to go into the matter in detail. I desire to make a few general observations on the subject of Regulations as regards their extent—by which I mean their area—their purpose, and their character.

In the first place, as regards the extent of the Regulations, this in our apprehension is a very important subject, which has been discussed, and our position indicated, but which perhaps may bear a few more words being said upon it. Now in the first place (and it is well to get rid of any charges of that sort at first)—my friend Mr. Carter has indicated at all events, if he has not expressly said, that the taking of such a position indicates want of sincerity on the part of Great Britain. It is better always, to meet charges of that sort at once, and to express exactly the view which you take when such a charge is made. We have no hesitation—no doubt—no difficulty—in taking that position, because from beginning to end, at all times, and now, we have been and are perfectly ready to join with the United States in any reasonable Convention, not to be decided by ourselves but to be decided impartially, which will ensure the preservation of the fur-seal in all parts of the world—where they can be found I mean, I am speaking of the Alaskan herd of course—having due regard to the interests involved on the Islands, in Behring Sea, and in the North Pacific Ocean. Our friends have never claimed, and never attempted to exercise any exclusive rights south of the Aleutian Islands, any more than we have claimed or would have had a right to claim in any way exclusive rights or any rights whatever on their islands; and so long as they say:

We will manage our islands just as we please—we will allow you no voice—no say whatever, in that matter. We will kill as much as we please, in such a manner as we please, in such numbers as we please, and not allow you to have any voice.

We answer:

There is no reason in equity or fairness then why You should have any exclusive right in the sea south of the Aleutian Islands. You have never claimed and never have pretended to exercise there any exclusive right whatever. When you are willing to submit the whole question to any reasonable arrangement we are, and always have been, perfectly ready to meet it. Our view about the protection of the fur-seals, is founded on the Report of the Commissioners, which we ourselves believe. We admit that for the protection of the fur-seals efficiently there must be Regulations on the Islands, in Behring Sea, and in the North Pacific Ocean. They never will be sufficiently protected, and the whole subject never will be efficiently dealt with, until some such arrangement is come to, and we are ready to make it.

I adopt entirely, so far as my own view is concerned, what I will refer to hereafter—the opinion of Professor Huxley, to which my friends seem to attribute some weight on that subject. We think his opinion is reasonable.

The PRESIDENT.—Do you think we are competent under the Treaty, to make such Regulations?

Mr. ROBINSON.—No, I am not saying that—perhaps you have not quite followed me in the other instance where we think you are not com-

petent. We know you are not competent to make Regulations on the Islands, and we submit you are not competent to make Regulations outside Behring Sea—that is all I say.

The PRESIDENT.—You think we cannot do good work?

Mr. ROBINSON.—I do not think you can do efficient and full work—I hope I shall not be misunderstood in that. I do not think your powers are sufficient to enable you to frame Regulations for the efficient protection of the seal race. In our judgment that would require Regulations on the Islands; in Behring Sea; and in the North Pacific Ocean.

The PRESIDENT.—I am satisfied that you have stated it distinctly.

Mr. ROBINSON.—I understand—and I wish to have no misapprehension—that whenever one side or another is charged with insincerity, it at least becomes them to be sincere in stating the view they take of the position they assume; and I hope, Mr. President, you understand me in regard to that.

We are perfectly willing to concur in the only Regulations which we believe will ensure the object which both sides have at heart, and which ought to be carried out; but so long as on the part of the United States they say:

"We are going to enter into no such agreement—we are going to allow you no voice in the place where you think some Regulations are perhaps most essential."

Then we say:

"We shall confine you, in the Regulations you are imposing upon us, to the words of the Treaty."

Now the first consideration that comes before us is naturally, and of course, the consideration of the words of the Treaty. I have heard it said that if you take the words of the Treaty by themselves it is difficult to argue that they do not authorize Regulations extending any where.

Of course I am speaking altogether of clause 7. I ought to have said in commencing this argument, that I think our argument upon this subject, namely upon the area of Regulations, is largely connected with the argument as to the area of the claim of Property Rights. The learned Attorney General has argued that, and you will find his argument in the Shorthand Writer's notes, pages 944 to 964. I am not going to return to that, or touch upon it, more than to give the Tribunal the reference to it. If that argument was not powerful and convincing to the minds of the Tribunal, it would be presumption in me to attempt to strengthen it or add to it. I have no thought of doing anything of the kind, but I proceed on the assumption that the learned Attorney General has made out his position, that the area of the claim of rights in Question 5 is limited in its extent to Behring Sea; and I propose, now, to say a word about the area of Regulations. I shall have to come back perhaps to one point which it may be as well to call the attention of the Tribunal to at this moment. You will remember, Sir, that in the Argument of the United States upon that Question 5 they take this position. They say—and for the first time they say as far as we know in the course of these discussions—for the first time they say in their printed Argument that they are entitled to Regulations in addition to protection. You no doubt understand what I mean. In the beginning, and from the beginning, the claim was Rights *or* Regulations—in other words, they have said:

"We claim to own these seals in Behring Sea, or to protect them in Behring Sea; and we say, if we have not either this Right or the Right of Protection, then you should agree with us in making some Regulations which will supply its place."

That was the position they took, as I shall be able to shew you in a few moments. *Now* they say in their argument:

We are entitled to Regulations even if you give us the property rights or the right of protection, for the right of protection which you may give us, or the right of property which you find to be in us, may not be sufficient to enable us efficiently to protect the seals, and therefore you must add to Award of Property or Property rights some Regulations which will enable us to protect them efficiently.

Now that, so far as we know, is an entirely new argument, advanced for the first time in the United States written Argument; and not only that, but we think that the opinion of both parties up to that time has been expressed in a directly opposite sense—that is to say, that the claim was to Regulations in substitution for rights. Our understanding always was: If you own these seals or if you have a right of protection of these seals, that will be sufficient for you; you cannot want Regulations in addition to that; and we never thought they were claiming such Regulations. Now let me see whether I have ground or not for saying that we were justified in that belief?

In other words, to put it differently, we had always thought that those words, "the determination of the foregoing questions as to the exclusive jurisdiction of the United States being such as to require the establishment of regulations", meant the determination of those questions in favor of Great Britain. That was the idea that we had. "If the determination of the foregoing questions as to the exclusive jurisdiction of the United States is necessary to the establishment of Regulations" we believed was never intended to mean anything else, and was never thought to mean anything else, until the time I have spoken of, than the determination of those questions in favor of Great Britain.

Let me see whether that was not also the understanding of the parties. In the first place, I find a letter from Lord Salisbury of the 21st of February 1891. I have not taken the reference to that, which I ought to have done. However, it is of no consequence, I have written down what he said. I can find the reference in a moment.

Mr. Justice HARLAN.—It is in the United States, Appendix, Volume I, page 290.

Mr. ROBINSON.—I may just as well take it from that, though I have the reference in another place. I read from page 294, the last paragraph but one from the bottom. Lord Salisbury there says.

The sixth question, which deals with the issues that will arise in case the controversy should be decided in favor of Great Britain, would perhaps more fitly form the substance of a separate reference.

The sixth question then, as you know, has now become article VII. When these questions were originally proposed by Mr. Blaine, they were in the form of six questions, and what was then the sixth question is now Article VII.

So there was Lord Salisbury writing to Sir Julian Pauncefote, asking him to read that dispatch to Mr. Blaine, and putting this construction upon that sixth question, which is the construction I have indicated.

Then I find that that construction is repeated by Lord Salisbury in his instructions to the British Commissioners, which are dated the 15th of January, 1892, at page VII of the preliminary pages to the British Commissioners' Report. There he says:

The Regulations which the Commissioners may recommend for adoption within the respective jurisdictions of the two countries, will of course be matter for the consideration of the respective governments, while the Regulations affecting waters outside the territorial limits will have to be considered under clause six of the

Arbitration Agreement, in the event of a decision being given by the Arbitrators against the claim of exclusive jurisdiction put forward on behalf of the United States.

There was Lord Salisbury again repeating in his instructions to the Commissioners that meaning and that construction which he had always put and which we have always put upon that section. I do not find that anywhere on the part of the United States that construction has ever been questioned. On the contrary, I find it, as I understand, adopted by Mr. Wharton in the United States Appendix Volume I, page 358, near the foot of the page, where he says:

In your note of February 29, you state that Her Majesty's Government has been informed by the British Commissioners that so far as pelagic sealing is concerned there is no danger of serious diminution of the fur-seal species as a consequence of this year's hunting, and upon this ground Lord Salisbury places his refusal to renew the modus of last year. His Lordship seems to assume a determination of the Arbitration against the United States and in favor of Great Britain, and that it is already only a question of so regulating a common right to take seals as to preserve the species.

Is not that a plain intimation by Mr. Wharton that he adopts precisely the same view? He says his lordship in taking that view seems to assume a determination of the Arbitration against the United States and in favor of Great Britain—that is, on the question of rights—and that it is already only a question of so regulating a common right to take seals as to preserve the species.

Of course there could be no question of common right until the exclusive rights had been decided against the United States and in favor of Great Britain. We say that the view which we have always taken is consistent not only with the words but with the avowed intention of the parties so far as we can gather it otherwise. My learned friend also points me to the conclusion of the Case of the United States, at page 303, where they seem to take the same view, and perhaps more strongly, because it is in a more considered document than any other I have referred to:

Second. That should it be considered that the United States have not the full property or property interest asserted by them, it be then declared and decreed to be the international duty of Great Britain to concur with the United States in the adoption and enforcement against the citizens of either nation of such regulations, to be designed and prescribed by the high Tribunal, as will effectually prohibit and prevent the capture anywhere upon the high seas of any seals belonging to the said herd.

Is not this again their own statement of that as the construction which they at that time took to be the construction and meaning of that clause, that if the decision was in favor of Great Britain and against the United States, then they claimed regulations; but never so far as we know, until their written argument, has there been a claim of regulations in addition to the claim of right, either of property or of protection, which they set out in the fifth clause.

Then we come a little nearer the question as to the construction of the treaty itself. Of course it is always to be remembered—and I am sure I need not cite anything in the shape of authority for a mere statement of law of that sort—that every document, treaty, agreement or statute, is to be construed with reference to all the surrounding circumstances, which include the circumstances out of which the treaty arose, and the subject-matter with which the treaty deals. Our books are full of cases in which words absolutely comprehensive, absolutely including everything, are nevertheless restricted to certain subject-matter, because they are found in such a context as to show plainly that that was the only thing that could have been intended when the words were

used. To those who are accustomed to the law of England, there are many very ordinary cases of that sort that could well be referred to. I remember one for example, merely as an illustration, where, if I recollect rightly, it was said that in an act of Parliament certain assignments under certain circumstances should be held to be null and void to all intents and purposes whatever. It could not use a stronger expression to avoid a document under any circumstances and in any case; but that being under an insolvent act it was held, of course, that it was only made void against an assignee in solvency. That is merely an illustration of the elementary doctrine in law, that you must always construe the words of a statute in relation to the circumstances out of which the Act arises, and the subject-matter with which it deals, always providing of course that this must be a possible and reasonable construction.

Now then, bearing that in view, let us see what is the fair construction of these words:

> If the determination of the foregoing questions shall leave the subject in such condition that the concurrence of Great Britain is necessary to regulations for the proper protection and preservation of the fur-seal in or habitually resorting to the Behring Sea.

First does that mean, by any fair construction, the fur-seal which are in or which habitually resort to the Behring Sea, no matter where they may be found:—that if you find a fur-seal a thousand miles south of Behring Sea, but which fur-seal for certain months of every year goes to Behring Sea, it is to be within those regulations and that regulations are to be protect it there? Let me put what might be an analogous instance.

Supposing it was said that regulations should be framed for the protection of the safety and health of people living in or habitually resorting to a certain city, say Paris, if you like. Would anybody say that if you found a person at the other end of the world, in Egypt, for instance, who spent three months of every year in Paris, that those regulations were to provide for his safety and comfort in Egypt, because he was a person who habitually resorted to Paris? And that is precisely the case of the fur-seals. Does it not reasonably mean when they are habitually resorting, and at the time that they are so resorting? And is it possible that such words can be used, is it not startling to hear that they are intended to be used, to protect seals which habitually resort to Behring Sea, no matter where they may be found, in any part of the world, at any time of the year? And is such an analogy as I have presented a forced analogy, is it not a reasonable analogy?

The answer would be: No; what we mean is people who either live there all the year or who are found there at certain periods of the year. When they are found there we have to protect them by proper regulations and by proper enactments, but we have not to follow them all over the earth and protect them wherever they may be found, at any distance or at any time of the year, because for a certain period of the year they resort to the area which they are said to resort to and in connection with which the regulations are to be made, and as to which, my learned friend says, the discussion has arisen.

Our view, we think, is strengthened, at all events, by considering the course of this discussion. What was it that the United States had been attempting to do before that? What area had they been attempting to police? They had been attempting to police Behring Sea. They had never attempted to police any other waters, or to extend their jurisdiction for the protection of the seals, or exclusive jurisdiction,

over any other waters. Is it possible that this article was intended to provide, without the slightest limit, for every other water in the world, when you recollect how the provision is made, and as a substitution for what rights it was intended to be used?

Then again, if the construction is to be as my learned friends contend, you are met with this difficulty. Outside of Behring Sea, if we are right, it is impossible to say whether the seals you meet with are seals which habitually resort to this side of Behring Sea or the other. No question, so far as I have observed, has ever arisen between us with regard to the fur seals in any part of Behring Sea except that eastern part the jurisdiction of which has been transferred to the United States. There never has been a question between us as to the other part. Nobody will pretend that they ever claimed any special right of protection for the seals which resort to the Commander Islands.

It has never been thought of and never spoken of. When you get south of the Aleutian Islands and you find a seal—I am not going back into details or into evidence—but if our evidence is to be believed it is impossible to say whether that is or is not a seal which habitually resorts to the Pribilof Islands. He habitually resorts to the Pribilof Islands or to the Commander Islands, or it may be some other place. He may go to the Commander Islands or he may go to the Pribilof Islands. He may go to them one year or another, or may be not for two or three years. As we all know, there are some seals which do not go there from their first year to their third. Is the construction claimed a reasonable one? Was it ever intended to claim regulations which would impose upon us the duty of protecting seals coming from the western part of Behring Sea and resorting to the Commander Islands? If not, it is impossible, as we submit, under the evidence, to extend those regulations beyond Behring Sea without imposing upon us that duty.

Again, I think there are other considerations, and strong considerations I venture to submit, which tend to support the same construction. The treaty reads "If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of Regulations". Therefore that seems to imply that the questions of right may be so decided that the concurrence of Great Britain shall not be necessary. But outside of Behring Sea the concurrence of Great Britain always was and must be necessary. There never has been a pretence of anything else. Inside of Behring Sea the United States claim that they have exclusive jurisdiction, and that they could act without the concurrence of Great Britain, but outside of Behring Sea no such claim has ever been advanced. That hypothesis therefore could have no application in the mind of the person who framed those questions at the time they were framed, and it could have no application, and no intended application, to anything but Behring Sea, because it is only if the concurrence of Great Britain is necessary that regulations shall be made. But there was no "if" about it outside of Behring Sea. That hypothesis and that "if" and that condition was utterly meaningless and useless and inapplicable as regards anything but Behring Sea; for there never was any question of being able to make regulations outside without the concurrence of Great Britain. It was not "if" the concurrence was necessary, but as a matter of fact her concurrence under all circumstances was necessary.

Now then what is the reasonable construction of those words, looking back, as I am always looking back, at the history of this thing from the beginning, connected as it is with and confined to the area of

Behring Sea. To my apprehension there is perhaps a stronger argument than all; but all these arguments present themselves in different lights to different minds. If the learned Attorney General is right in the confinement of the area of rights to Behring Sea, then the result of the construction of our friends is that we should be worse off if we succeeded in all our contentions as to rights than if we failed. Could that have been intended? If the claim in question 5 is confined to Behring Sea then if we fail as regards that there would be no regulations at all, because they would have got all the rights they claim. But they say, "If Great Britain succeeds as to that, and we have got no rights, then we can get regulations all over the world". It is much better for us that we should fail and they should succeed. Is that a reasonable construction? These are all considerations arising upon the construction of the words.

Senator MORGAN.—It seems to me, Mr. Robinson, that would depend upon whether the purpose was to preserve the seals or whether the purpose was to destroy them.

Mr. ROBINSON.—I am perfectly willing to admit that the purpose was not to destroy them. There is no question about that; but, with great deference, I cannot understand how that can affect the construction of the treaty.

Senator MORGAN.—If the purpose is to preserve the seal, you would not be any worse off by doing it, would you?

Mr. ROBINSON.—I do not know. Does that affect the construction of the Treaty? If what you mean to say is that the construction of this treaty necessarily gives the right to do everything for the purpose indicated, then that is simply deciding the question in advance, so to speak. I am not here to say that we would be better or worse off by destroying those seals than by saving them. I am simply here to discuss whether the regulations to be imposed upon us as compulsory shall extend beyond a certain area. This is a very serious question. It is one thing for a nation to agree by convention and of her own free will that regulations shall extend over a certain area. It is another thing altogether to have those regulations imposed upon her against her will by another power. We are quite willing to meet together and to agree, if we can, or to leave it to other persons to arrange reasonable regulations for the whole area where we think regulations are needed; but it is one thing to do that and another thing to have regulations imposed upon you by a Tribunal, without your consent, the observance of which would involve an enormous expenditure and enormous difficulty, and I might say in regard to the proposition of my learned friends, almost insuperable difficulty, whether you like it or whether you do not.

Therefore we present all those considerations, and to my apprehension the last one is perhaps the strongest, for it is founded on reason. Can the parties have meant, when these questions of right were the real substantial matters that had to be decided between the parties—can it be contended that the power which failed on those questions should be worse off than if she had succeeded? If that was the purpose, what was the object of submitting those questions? It would have been far better that we should lose on the questions of right.

So much for that question.

The Tribunal here adjourned for a short time.

Mr. ROBINSON.—Mr. President, Mr. Senator Morgan asked a question as to the time of vessels going to Behring Sea, and I may say that if you refer to the third volume of the Appendix to the British Case, page 358, you will find all the particulars about that. I need not delay you

to read them now, but everything connected with the sealing industry and its progress is there referred to. You will find in the House Executive Documents n° 177, 40th Congress, 2nd session, vol. 13, page 255, the beginning of the cod fishing in that sea:

Two or three small schooners sailed from Victoria and made fair catch, so much so that the importation of cod into British Columbia has ceased.

That was in 1866.

Then you will recollect, Mr. Senator Morgan, you asked me a question yesterday about the movements of the holluschikie, and their either going through the other seals or ranging in the rear; and I have taken the trouble, as a matter of interest more than anything else, to look into it. If you desire to pursue that, you will find it in Mr. Allen's Monograph on North American Pinnipeds at page 393; and next, in Mr. Elliott's book, commonly called the Census Report, page 43. The result is that it seems to vary very much in different rookeries, and their habits are very peculiar.

In some rookeries they have been by common consent allowed a lane, so that they pass up the middle, and if they keep to that they are left alone, but if they diverge a foot from it they are torn to pieces. In others they are not allowed the concession of a lane, and are forced then to go all the way round and haul up in other places. That is the substance of it, and their habits seem very strange and peculiar in that respect.

Senator MORGAN.—I gathered from my view of the evidence that the seal family had some strict regulations like the bees for the different grades, the pups, the holluschikies, the males, the females and the old males. It was that that prompted me to ask the question.

Mr. ROBINSON.—Yes, it is interesting to look into. They are allowed the lanes and if they go up the lanes they are left alone; but if they stray they are torn to pieces by the owners of the place they intrude upon.

Senator MORGAN.—The point of my question was, whether the seals separated themselves from each other in classes while on the land, so as to provide an opportunity for their being taken in one class without the disturbance of another.

Mr. ROBINSON.—Of course, I was not aware of the point you were directing your question to. I have only given you information upon the subject to the extent I have been able to find it.

Then there was a question that the President asked as to the increase of the sealing fleet after the *modus*. I have a little memorandum of how that happened. You must remember that the sealing schooners always clear between January and April, and the *modus* for the season of 1891 was not signed till the 14th June—that is in our Appendix, volume 3, No. 3, page 18. By that time of course and before the *modus* was signed all vessels would have cleared, and there were 48 vessels of the United States and 50 for British Columbia making 98. In 1892 there was no *modus* expected, and on the 18th March Lord Salisbury had objected, as you will find in the Appendix n° 3, volume 3, to the British Case, page 160, but on the 18th April the *modus* was signed for two seasons.

None having been expected the sealing fleet increased that year, that is to say, 46 United States cleared and 65 British Columbia making 111. On the 18th April the *modus* was signed for two seasons, and the moment that was agreed upon the fleet fell off. In 1893 the fleet was United States 24 and British Columbia 55.

General FOSTER.—In 1893?

Mr. ROBINSON.—Yes.

Mr. CARTER.—Where is the evidence of that?

Mr. ROBINSON.—If you ask me how it is ascertained I cannot tell you, but I can ascertain for you.

The PRESIDENT.—Do you consider that that is not evidence Mr. Carter?

Mr. CARTER.—We want to see where it appears and what papers show it.

General FOSTER.—Because it is not possible yet to tell what it is.

Mr. ROBINSON.—They tell me that

55 sealers cleared from British Columbia, 25 British, to Asiatic side, all sailed, 24 from American ports half to Asiatic Milne.

That is the gentleman from whom the information comes.

Mr. CARTER.—Well we object to that as evidence of the sealing fleet of 1893.

Mr. ROBINSON.—Then let it be withdrawn, because I do not care about it.

Mr. CARTER.—Then I wish that Mr. Robinson would not read what he does not intend to be evidence.

Mr. ROBINSON.—I thought I was giving Mr. Senator Morgan some information that he asked for. If there is any sort of objection to it let it be withdrawn.

General FOSTER.—The objection is that we cannot tell at this time what the sealing fleet will be for this year.

Mr. ROBINSON.—I can tell you no more. I was not giving it with any view of that sort one way or the other. It had better be considered not to have been mentioned.

The PRESIDENT.—It has no bearing upon the question.

Mr. ROBINSON.—No.

Then I have spoken of the question of area of these Regulations. I have only to add to that what you will all remember, and what must not be lost sight of in considering any such question as this, that the Treaty only relates to and is concerned with the questions *that have arisen*, and no questions had arisen except with regard to Behring Sea. All that has a strong bearing on the construction of the Treaty. Further, with regard to the construction which I have put upon it, that it relates only to seals while they are frequenting Behring Sea, and to the protection of seals while so frequenting that water, I can quite fancy that, if it were necessary, it might be right and within the power of the Tribunal to give a certain zone around Behring Sea itself, if you understand what I mean, and the passes. Suppose it was a question of making regulations to protect wild animals in a certain field, if it were necessary for their protection while in the field that persons should not come within a certain distance of the field—I do not care what—I should think that that was included in the power to make regulations for protecting the animals while in the field, namely, you must not disturb them or annoy them, and they may stray and be killed outside the limits; and therefore you may give a zone outside that area; but my contention is, that the subject matter, the protection with which the Regulations are to be concerned, is the seal race while they are frequenting Behring Sea. That is the essential purport of it. Then, if so, there are these three circumstances, at least, which, in our point of view, are most material circumstances, which are all presented as difficulties to the opposite construction. In the first place, we say, that

that hypothesis, namely if the concurrence of Great Britain should be necessary, is meaningless and useless, except as applied to Behring Sea, it has no application and could not be intended. In the next place, we have this singular peculiarity: here are two persons, parties or Powers, differing and claiming certain rights—and claiming, in the event of those rights, which is the substantial thing, being denied to them and found not to belong to them, certain Regulations. We have the fact, that it is claimed, as the fair construction of a Treaty to settle those rights and Regulations, that they are better off if they get Regulations than if they get rights: in other words, that the Regulations, if they are found not to have property, may be to them much more effectual than if they succeeded on the question of property and got it. I wish the Tribunal to understand the first point that as to the concurrence; it is that outside Behring Sea, the concurrence of Great Britain must be necessary, there could not be an "if" about it or any hypothesis about it; but the very way of putting this question seems to show that the question may be so decided that the concurrence of Great Britain is not necessary. There was not a pretence there could be regulations outside of Behring Sea without her concurrence; and that condition attached to the 7th clause either related to Behring Sea or meant nothing, or had nothing to apply to.

I do not know that I can put it stronger, and the last thing I desire is, to waste time in useless repetition. It is worth while, perhaps, without reading documents, because it is most material, in connection with this question, to consider the history of that clause 7. All the documents relating to it will be found, I think, cited in the argument of the Attorney General, at the pages I have read, and I have no disposition to read them or refer to them again; but it is very singular to see how the difference has arisen, between its form as first proposed and as it now Stands upon which difference this whole question depends, and upon which, and upon which alone, my learned friends have any ground to contend they can go beyond Behring Sea. If you remember, as I have no doubt you do—I have been through them so often that I know them almost by heart—those first six questions were proposed by Mr. Blaine in his well known despatch of the 17th December, 1890. The 6th question is that which has now become the VIIth Article in the Treaty. As first proposed by him on the 17th of December it unquestionably was confined to Behring Sea, and expressly confined to Behring Sea. No reading of it can make it apply beyond Behring Sea, or to any other water. It will be found to be beyond question or doubt on looking at it. When that was sent to Lord Salisbury, while he accepted the first and second questions, and objected to the fourth and fifth on other grounds which are quite immaterial here, he objected to the sixth question. His ground then simply was that it would more properly form the subject of a separate reference, but he did not object to it on any other ground at that time. Mr. Blaine on the 14th April, 1891, said that as Lord Salisbury objected not to the form of the question, but simply to the mode of procedure, that he had no objection to its form, and that it was accepted, and he repeated it again in the same form. All those letters are to be found following each other. The first I have stated is in the same volume of the Appendix to the United States Case, volume I, page 286. Then at pages 290 and 294, when Lord Salisbury objected to it on that ground, it was proposed again by Mr. Blaine on the 14th April 1891, at page 295. Then, curiously enough, it was left from April until June, and in June you will find that Mr.

Wharton proposed it in its present form, saying he was directed by the President to propose it in that form, and he thought it would remove Lord Salisbury's objection.

Now the objection Lord Salisbury had taken was, and was only, that that question seemed to attribute some abnormal rights to the United States arising out of Russian claims, which he said it ought not to do; but instead of altering it only to meet that objection, it was in other respects altered, and for the first time these words. "in or habitually resorting to Behring Sea" were introduced, which for the first time, gave ground for the contention that the regulations were intended to extend beyond Behring Sea. Why that was done I do not know exactly. I have gone through it with the greatest care, and can only point out this to the Tribunal—it would take too long to go into it minutely again, but it has arisen in this way. There were negotiations going on together for three different things; first, for the settlement of the questions to be referred, all of which had been settled except question 6. Then, a negotiation going on for a *modus;* and at the same time negotiations for the appointment of a commission. What you find is that these three negotiations were all going on together from about April, 1891, and if you trace, as I have done, the course which those negotiations took, and trace the various letters which were written in the course of them, these changes would seem to have arisen from letters written in May 1891. Perhaps, if I give you the pages of the book, without either reading them myself or troubling you to read them now, those who desire to follow this history, so to speak, and the genesis of this clause, will be able to do so without difficulty, and to pursue an enquiry which can only be pursued by reading these things and spelling them out for yourselves. The pages are 305 and 319, and if you look at our Appendix Volume 3, number 3, 1892, page 52, you will see what is not to be found in the United States volume, and the only thing which is not to be found there—the acceptance by Lord Salisbury, on the 6th July, of this question in the form in which it was proposed by Mr. Wharton on the 25th June.

Then the other letters to which I refer are to be found at pages 299 of the same Volume, namely Volume I of the United States Appendix; and pages 302; 303; 304 and 305; 306; 307; 308; 309; 310; 311; 312; 314; 315, and 316. At those pages you will find the history of this matter; and also at page 319. Those, I think, are the pages which will give you the whole history of this.

Then, at page 356, are letters which I think have been already referred to by the Attorney General in his argument. There is a great temptation to one who has spelt these out to try and explain them; but I do not think it can be satisfactorily explained in the course of an argument, because it requires one to spell out these letters for oneself one after the other and to see if from them you can arrive at the way in which this limitation came to be made. One thing is certain; as late as the 15th of January, 1892, in those instructions given to the Arbitrators, you find that this agreement for a Commission was intended to be separate; but it got into the Treaty because it was considered undesirable to have two different documents to pass through the Senate, and so they came together.

Senator MORGAN.—How is that?

Mr. ROBINSON.—You will find as late as the 15th of January, 1892, this was in the form of a separate document, and the explanation given was that it was thought undesirable to put two documents through the Senate, and, therefore, they incorporated it into the Treaty. That is

the history of it. I have never myself been able to ascertain for what reason it was that that enormous change in this original was made. It was not required to meet the objection Lord Salisbury had made; but goes far beyond that, and gives it, according to my learned friends' contention, a totally different scope and a totally different effect. I do not mean to say that you cannot suggest arguments about it by reading these letters.

I think you can. I only say that I have not been able to satisfy myself how it took place, but the pages I have given you will enable you to trace that out, and everything I know of is to be found at those references which will throw any light upon it.

The PRESIDENT.—At page 315, to which you alluded, there was a distinct allusion to the North Pacific, both in the despatch of Sir Julian Pauncefote and of Mr. Wharton.

Mr. ROBINSON.—Yes, Mr. President, quite right; there is a distinct allusion to the North Pacific, but there were other arrangements going on at that time for a *modus*, and that is where the difficulty comes in. You see the investigation of the Commissioners was always intended to go into the North Pacific or even all over the world, and the difficulty and confusion have arisen from the three negotiations going on together;—the negotiation for a Commission, which was to extend all over the world; the negotiation for this Treaty, which as we contend was confined to Behring Sea; and the negotiation as to a *modus*.

Senator MORGAN.—You say "all over the world;" but you mean, I suppose, the North Pacific?

Mr. ROBINSON.—As far as the seals went.

The PPESIDENT.—Do not you think there was logic in putting in the same area for both investigations?

Mr. ROBINSON.—I should have thought not; I should have thought you required clear words to show that you extended the area for Regulations beyond the controversy as to the right, and the best proof of that is that Mr. Wharton says in his letters the area of the *modus* is confined to the area of the controversy. He says.

We have never had a controversy beyond Behring Sea.

The Commission was never intended in its origin, or till it got into the Treaty in these words, to do more than to supply materials for a Convention. It was only intended to be a guide for a Convention.

The PRESIDENT.—But the materials were to be fetched from the Pacific, and, therefore, it is to be supposed the Convention was to apply to the Pacific.

Mr. ROBINSON.—Yes; but that is another Convention, and not this.

Senator MORGAN.—It seems to have been the hope of Lord Salisbury and of the American negotiators that the Convention to which you referred, which was substituted, rather anticipated the necessity for the Arbitration.

Mr. ROBINSON.—I think, up to a certain time, there was a great hope there would be some sort of an Agreement to put an end to the necessity for it.

The PRESIDENT.—Do not you think the Arbitration is an Agreement put in another form, and confided to other persons?

Mr. ROBINSON.—No; I find nothing to show that the imposing of compulsory Regulations on either Power was intended to be a substitute for the Commission; and the best proof of that is that the Commission from beginning to end was directed to show what Regulations were necessary not as between Great Britain and the United States, but as between Great Britain, the United States and Russia. The

Convention was never intended for any other purpose; it was to ascertain what Regulations were necessary, or what Agreement was necessary, as between Great Britain and the United States and Russia, and any other Power.

Senator MORGAN.—Having first ascertained that any Regulations were necessary.

Mr. ROBINSON.—I assume that of course. I never doubted that that if no Regulations were necessary none were to be made. It appears in the correspondence that Lord Salisbury at one time wanted a distinct understanding that if Regulations were not necessary they should not be made, and Mr. Blaine said it is no use putting that in because that is the understanding. This Commission for the purpose of assisting in framing Regulations to be imposed compulsorily on other powers was never thought of till it got into the Treaty in the present form. The Treaty covered the Islands, Behring sea and North Pacific, and the commission was to ascertain what arrangements were necessary, not between Great Britain and the United States, but between Great Britain, the United States and Russia, or any other Power.

Then I confess myself to having been always puzzled to ascertain what was the meaning of Mr. Wharton's proviso, that was put in by him, that the agreement for a Commission should be without prejudice to the question submitted to the Arbitrators. I do not profess to know why that was. It was suggested without explanation and accepted without explanation. My own view is that it was probably because the question as to rights was restricted while the Commissioners' inquiries were not—it may have been put in for that purpose, but for what purpose it was really put in we are absolutely left to conjecture.

The PRESIDENT.—It might mean that the conclusion come to by the commissioners, even if they both agreed, would not be binding upon the Arbitrators.

Mr. ROBINSON.—Yes, they might be of use but not binding.

The PRESIDENT.—I suppose that is what it means.

Mr. ROBINSON.—Perhaps it meant that. I have tried to conjecture a great many reasons for putting in a thing of which no explanation is given.

The PRESIDENT.—Yes it is all surmise and conjecture, and what you have been explaning is nothing but conjecture—ingenious conjecture, still it is nothing but conjecture.

Mr. ROBINSON.—It is, and I do not pretend to say anything with confidence about it, because when one man proposes a thing without explaining it and another man accepts it without asking for an explanation, it is only a question of surmise; and I have two or three different surmises and conjectures. One I have advanced—another you have suggested. We cannot say what it was. I have pointed it out to you as it strikes us in order to see what assistance can be given.

The next thing is the purpose of these Regulations, because when we get at the purpose, if we do get at it, we get a long way towards their proper scope and general character. There is no question as to the purpose of the Regulations; in one respect; the purpose was to prevent the seal race from extermination. But the question is, against what? It was to protect the seal race from extermination against something. It surely was not against excessive killing on the Islands or immoderate killing on the Islands, or wasteful killing on the Islands. That would be perfectly absurd, because you must recollect we are discussing this question on the assumption of equal rights.

It is assured that pelagic sealing is a lawful occupation, and that the rights upon which they claim to stand in consequence of its unlawful character are found not to exist. We, in following pelagic sealing, are following a lawful occupation. It would be absurd, and so unreasonable as not to bear argument at all, to say that that right is to be abolished in order to enable those who own the Islands to kill wastefully on the Islands. It cannot be to protect the seal race against their immoderate or excessive killing—that is plain. What then can it be? It cannot be predicated upon anything except upon a reasonable exercise of their rights upon the Islands. That is demonstrable to my apprehension as a mathematical proposition. If my learned friends are right in saying:

"You have nothing to say as to the Islands at all, with regard to our management or the number we kill.

That is none of your business";—if they are right in that, and if they are entitled to say.

"We will kill on the Islands every seal the whole race can spare stand." Then there was no object in this Arbitration, because pelagic sealing must be abolished—that is plain. It is not a question of argument—there is no denying it. If that be so the two Powers that have come together to ask you to make Regulations did not know what they were about, for there were not any Regulations to consider *ex hypothesi.* If they are entitled to kill every seal that can be spared upon the Islands, there is only one Regulation that will put a stop to the Eventual extermination, and that is to say that no one else shall kill any.

It is perfectly unreasonable to suppose that that could have been the regulation intended if pelagic sealing be a lawful occupation and we are exercising a lawful right. You understand I hope what I mean by that. I do not wish to reiterate or repeat it, but sometimes if you put propositions in a short way they are not clearly appreciated by those to whom they are addressed, and I should be therefore much obliged to the Tribunal if they would say that they do not think I have made any particular point clear. I know what I have in my own mind—I know what I mean without thinking much of it—but sometimes another mind does not understand what is meant when it is suggested perhaps in a way that has not appeared to that mind before. But this is clear beyond all doubt or question. If they are entitled to say, as they do say in fact—"what we do on the Islands and the number of seals that we kill on the islands is none of your business, self-interest will guide us in that"—self-interest will prompt them to take every seal of the herd that can be spared in their belief. If they are entitled to do this there is no question of regulations; every seal killed after that tends so far to extermination—that is to say, that is more than should be killed, and, of course, every other killing ought to be put down.

Now on the assumption of equal rights, the suggestion of this proposition seems to answer it. You are to try and make such regulations as seem to you to be reasonable and proper upon the hypothesis and assumption of equal rights. The regulations which they contend for are simply regulations to enable their right to prevail wholly over all other rights, which can never be right—and to enable their right to prevail over others whether they exercise their right reasonably or excessively. There can be no sense in that. We are just as well without the right, if our right is to be wholly subordinate to the right of others, and to be abolished to enable them to exercise their right to the utmost. We had better not have had it, and we should have been saved all the trouble and expense of this reference. Our object in coming to the Tribunal is to contrive reasonable regulations for the exercise of our mutual rights,

but, according to our friends' case the only regulation admissible is the one they suggest.

The PRESIDENT.—We are supposed to be dealing with them as reasonable persons who have conducted themselves reasonably to take care of the husbandry. If they do not, you would want Regulations for the husbandry.

Mr. ROBINSON.—That must be obvious.

Senator MORGAN.—I suppose we are dealing also with the question of the preservation and protection of the seal race.

Mr. ROBINSON.—Unquestionably. But against what are you protecting it?

Senator MORGAN.—Against all animals which have power to destroy.

Mr. ROBINSON.—And not as against people who exercise rights wastefully and excessively or unreasonably? Why are they to do so?

Senator MORGAN.—Upon that, if you ask me the question, I would suggest this.

Mr. ROBINSON.—I am not asking the question in that view sir.

Senator MORGAN.—I would suggest that the right of fur sealing or any other rights on the ocean, are in the nature of easements rather than in the nature of qualities and rights.

Mr. ROBINSON.—Just the same it is an easement on the Island with reference to the seal—nothing more and nothing less.

Senator MORGAN.—Hardly, when according to the doctrine of *ratione soli* in the law of your country and mine, a man may be the owner of property that is found upon it.

Mr. ROBINSON.—No, with great deference, not. You can take the property, but you are not the owner. You have an easement which consists in the right to take it first before anybody else; but I am not going back into that question of property.

The PRESIDENT.—I think we have heard plenty about it.

Mr. ROBINSON.—I think so, sir.

Senator MORGAN.—So do I, but I always supposed the rights *ratione soli* to be positive rights.

Mr. ROBINSON.—They are subject sometimes.

Senator MORGAN.—They are subject to being modified, but the condition subject to which the title exists is a positive right.

Mr. ROBINSON.—A very positive right or easement, if you can take as many seals as you can get, and own them when you get them.

Senator MORGAN.—As much as a tree on a man's land is an easement.

Mr. ROBINSON.—You understand, Mr. Senator, that I am not responsible for the law. If I am told it is not the law I have nothing now to say. If it is the law, I did not make it; and beyond all doubt it is the law.

Senator MORGAN.—I was merely referring to the general character of the rights and privileges of sovereigns equally and their subjects and citizens upon the high seas in respect of some of the privileges of the high seas, that they may be classed as easements.

Mr. ROBINSON.—I do not care what they are classed as—we have a right to them.

I am arguing upon the assumption that you have given us a right to them. If you have not there is an end to it. This argument proceeds entirely upon the hypothesis that pelagic sealing is the exercise of a lawful right—just as lawful and as much a right as the right of the owners of the Islands to kill the seals on the islands.

Senator MORGAN.—It is only a different question so far as it extends.

Mr. ROBINSON.—As far as it extends, and it extends as far as we know without limitation. If it is a lawful right there is no limit to it.

Senator MORGAN.—That does not follow.

Mr. ROBINSON.—It follows, with great deference, if the right be lawful.

Senator MORGAN.—A lawful right of pasturage does not imply that a man owns the land upon which cattle graze.

Mr. ROBINSON.—Nobody says he owns the land. I am talking of the right to catch—of a certain right on the *high seas* which we are entitled to assert. The one is an easement as much as the other. I do not desire to spend time in trying to answer suggestions that you make in that respect, because the argument has been so exhausted that I think it cannot be added to, except by my saying this—that the argument is proceeding now on the assumption of the exercise of pelagic sealing as the exercise of a lawful right.

Senator MORGAN.—If you will allow me. I am merely suggesting on my part that the exercise of it as a lawful right is not an unlimited right, the exercise of it is according to the safety of any country or people—it must be restrained according to the rights and interests of other people in other situations.

Mr. ROBINSON.—I will only say I know of no law or principle of any sort which affirms that. I can say nothing more. If I am told the law must be so, I can only say I have examined the law to the best of my ability, and I do not find any such law anywhere. I am not able to say that I have seen anywhere any law which restricts the right of those to whom the high sea is open, in the exercise of their rights there just as they think proper.

Senator MORGAN.—Then, of course, you are going back to the same position which has been taken several times in this case, of the right of the pelagic hunter to put a cord round the Pribilof Islands, and destroy the seals as they come and go across the three mile limit.

Mr. ROBINSON.—I have referred to that before. I remember your asking me some question before about it. I say you can find no law to check or prevent it. It could be stopped by convention, but it is impossible to find any law which prevents it. The present argument proceeds on the assumption that we have rights that we are entitled to, and the question of regulations is in connection with that assumption. I am not going back to argue over again whether we have rights—the rights will be defined by your Award. We must proceed in this argument on regulations on the assumption that the rights which they have claimed are held not to exist, and that pelagic sealing is held to be a right, which it always was, from the beginning. If so it is impossible that it can be put down or abolished wholly in favor of another right, and wholly in favor of an unreasonable, or excessive, exercise of that right—if it could be so, as I have said, and as is absolutely clear, there is only one regulation which could be made; and our friends in that are logical. Instead of assisting us to make regulations, they have taken precisely that position.

Lord HANNEN.—Is it not a summary of your argument to say that under a power of regulation you cannot prohibit?

Mr. ROBINSON.—Certainly.

Lord HANNEN.—I ventured to suggest that that was a summary of your argument.

Mr. ROBINSON.—It is a summary of my argument. Your Lordship is perfectly right. It is another way, so to speak, of putting the argument. If we are to proceed to that, it is impossible under a power to *regulate* the pursuit of a certain industry to regulate it out of existence.

Mr. Justice HARLAN.—You must *regulate* so as to *preserve* must not you?

Mr. ROBINSON.—You must regulate so as to preserve the seal race.

Senator MORGAN.—Regulate to any extent, if you even do not prohibit?

Mr. ROBINSON.—I venture to say, and there are plenty of cases of this sort, you may not, under colour of regulation, prohibit. You may not pretend to regulate, and under the form of regulation prohibit.

Senator MORGAN.—Possibly under colour of a right of pelagic sealing you cannot destroy.

Mr. ROBINSON.—In other words, you cannot use any right or any power for a different purpose to that for which it was given.

A power of regulation here does not include power to prohibit either directly or indirectly. In other words, as the cases put it, it is an abuse of the power, under the name of "regulation", to prescribe what is an effectual prohibition. I will state a very familiar instance of that kind of case within my own knowledge. A municipal Corporation or authority having power to determine the number of taverns which should exist in a certain municipality, and having happened to be composed of men who desired to put down taverns altogether, said there should be only one tavern in that place, and that it should be situated at the northeast corner, I think it was, of the whole municipality—practically saying there should be none. The Court said that was not a proper exercise of the power; that it was given to them to prescribe in reason the number of taverns that should be allowed, not under color of allowing one to say there should be none.

Our courts are full of cases of that kind. It is only an elementary proposition, that you must use a power not only in form but in substance for the purpose for which it was given.

Then I proceed to the character of the regulations; and I have a few words to say upon that, which to my mind, is practically the most important question of all. We have now especially to bear in mind always that we are discussing regulations as between people having equal rights. I venture to say that you must go a little farther. It may be difficult for my learned friends to admit us to this position now, having called us criminals and pirates and everything else throughout the case, to find that, instead of being criminals and pirates, we are pursuing a legal occupation, and practically that they are in partnership with us in that occupation; but we have to take that view of it. If we have equal rights, I venture to ask the Tribunal, in all reason, to attribute to us the possession of equal sense. I say that we are fair in the propositions that we propose; and I do not put it upon any high ground, that we desire to be fair, or that our motives are fair. I simply say it is to our interest to be fair.

We have a large capital invested in this business. The men who have invested that capital are intelligent men. It is no object to us to destroy the seal race. It would be just as much against our interest to destroy these seals as it would be against the interest of the other people who have an interest in them. We do not want to do it, not that we profess to be either better or more pure than other people, or to have higher motives than other people. It is simply the ordinary business motive which impels every business man not to destroy that out of which he makes his living.

Therefore the regulations which we propose are such regulations as would preserve the seal race, in our interest as well as in theirs, and which must preserve the seal race, or else they are no use to us any more than they are of use to them. I only mention that because throughout this case, from the beginning—not confined to the question

of property rights alone, but all the way through the case—my learned friends have attributed to us a desire to exterminate this race, a desire, as they say, to prevent them from conferring on mankind the blessings of sealskins. Really, now that we have a share in this property, it would seem to be useless to discuss it on that ground.

The people who are interested in reality in this industry are the people who are making their living out of it, and the people whose capital is invested in it. The world practically neither care anything about it, nor have any practical interest in it. If to-morrow, for instance, those pearl fisheries of Ceylon, that we have heard so much about, were to be destroyed, I should sympathise very much with the people, if there is a large number of them, or whether the number be large or small, who have made their living out of it; but as to talking about the blessings of pearls to mankind, and sympathising with those people who have to mix their diamonds with pearls or to wear their diamonds alone without pearls, or do without pearls, the thing is absolutely absurd. Whatever evils may be in store for the human race in the future, the scarcity of sealskins is about the most extraordinary and fantastic fear for the mind of anybody to be directed to.

We are discussing this question then simply as persons jointly interested in an industry, which we both wish to have protected, or rather, the foundation of which we both wish to have protected, by reasonable regulations.

The first difficulty which strikes one in that aspect—at all events, which strikes me—is that turning again to the treaty, and turning to the knowledge which we have, and the only knowledge which we are permitted to have, on the subject, I question very much whether the Tribunal is in the position which they were intended by the Treaty to be in. If you look at Article 7, it is said that they are to determine what regulations are to be made, "and to aid them in that determination, the report of a Joint Commission, to be appointed by the Respective Governments, shall be laid before them." Let me ask the members of this Tribunal, have you got the aid that the Treaty provides? You have got a joint commission which tells you nothing. You have got two separate commissions which contradict each other, and differ from each other in almost every essential particular.

Is that an exaggeration of the truth? I quite understand what was intended and what was expected by both powers. It was expected, though expected without any reasonable ground, and expected in our joint ignorance of the whole subject, that when we each sent up scientific commissioners to investigate and report upon this subject, there would be found no difference as to their views of seal life; but as a matter of fact we find these gentlemen going up, and I will assume now, notwithstanding all my learned friends have said, desiring to ascertain the truth. We find them coming back, differing about the most essential particulars; and these two reports, so different, are now handed to this Tribunal under the Treaty as what they were intended to have to aid them in determining the regulations. Have you got the aid the Treaty provides for? The bearing of that is simply this: that it leads one to consider more carefully what regulations, under the present state of things, and with the knowledge now existing, is it reasonable and right or desirable to make; and that is a question which is not in the interest of either one side or the other exclusively. It is a question to be decided in the interest of both sides.

Let us see for a moment, in that view, what are really the facts as to which there is a difference of opinion or as to which very little indeed is

known, because there are several such facts, and very material facts. In the first place, let me ask, what would you desire to know in order to enable you to decide what regulations are reasonable? We have not the least idea at this moment, with anything approaching to certainty, what is certainly one very essential condition: How far do the females go for food, or do they go for food at all? We are told by the United States Commissioners as a matter of positive opinion, that they go long distances. I think some people say they go 100 or 150 miles. Those who ought to know best, as the result of long examination, say that they think protection for 30 miles would be sufficient. Is there any sufficient knowledge then upon that subject?

Have we any knowledge whatever as to the age of these animals, to what age they live, either male or female? We are absolutely without any knowledge whatever. Have we any knowledge as to how long the females live, or how long they continue to breed? Absolutely none whatever. On those subjects we are in utter ignorance,—just the same ignorance as we were in before these Commissioners went up.

Then as to the date of weaning. We do not know that or how long, in other words, the pups are dependent upon their mother, which is a very material thing. They differ about that. Not only they differ, but the evidence which they are trying to come to a conclusion upon differs. It is impossible to say. It has got to be ascertained by some years of careful observation.

Then how long do these bulls remain on the rookeries? No human being knows. That is a most essential, perhaps the most essential, thing to ascertain with regard to any regulations of the killing. Then, when does the female resume her feeding? All that we know nothing about.

Now, those are perhaps the most essential facts which require to be known, in order to enable anyone to decide what conditions are reasonable. If we have not those facts then we have to consider what sort of conditions it is safe to make without knowing more.

Is it safe to make anything in the shape of permanent regulations, or is it desirable to attach any sort of conditions to the regulations which you make? It has been doubted whether—I cannot say doubted, for I do not know; at all events the question has been asked—you have a right matter to make regulations with the condition attached that either side at a certain time may denounce them? I venture to suggest that that can hardly admit of doubt. I cannot imagine that it was intended that you should make regulations here lasting for all time, when they might turn out next year to be radically wrong. Added to that, they are regulations which, in the very nature of things, must require from time to time, almost certainly, revision and modification. Was it intended that you should make regulations of a kind suitable or unsuitable, which within two or three years may fail to answer the purpose, or which may be totally inefficient? The only answer I have heard suggested to that is that this is to be accepted as a final settlement of the matter. That, though I may perhaps have taken too much the view of a lawyer in that respect, never occurred to me as meaning more than that this must be a final settlement in the sense that nobody has a right to appeal against it, or to re-open the matter; but whatever you choose to make as your settlement, whatever regulations you choose to prescribe, that is final in this case, and both parties are to accept it. But if you choose to say, We will make no regulations, or if you choose to say, "We will make regulations which shall extend for one year or ten years," or anything else, that is a final

settlement; that is to say, it is final in the sense that it is irrevocable, and both parties are bound by it.

The PRESIDENT.—We cannot say that we could make no regulations, if we act under the conditions provided for in Article VII.

Mr. ROBINSON.—I did not mean that, Mr. President. I mean if the circumstances are such that you conceive it to be your duty to say that no regulations are wanted, that would be a performance of your power under the treaty. I was not referring to the special facts, or saying that you ought not to make regulations. That is not what I was thinking of. I was saying that if in your judgment you should say no regulations are wanted, that would be final. If you make regulations for a year or ten years, that is final. That is to say, neither side has a right to appeal against it, or to re-open the question so long as that decision lasts.

Then in that point of view, what is the principle upon which these regulations should be made? I venture to submit that there is but one principle that can be adopted. You cannot make regulations which will have any invariable and certain effect upon both or either of these industries unless you subordinate one altogether to the other. There is no priority between these industries. Nobody can point to a law which says that our industry shall be prior to theirs or that their industry shall be prior to ours. In other words, both sides have a right, so far as law is concerned, to exercise their rights as they may think proper. We have no power to prevent them from exterminating the seals on the seal islands. You have no power to prevent them. There is no right to say—when I am speaking of right, I mean no equity of any kind—to say that our right, which has just been given to us, shall be abolished in favor of land killing.

I venture to suggest again that the statement of that carries with it its own absurdity on its face. Is it to be supposed that they are to be better off without property than with property? Is it to be supposed that this Tribunal is to say to the United States in one sentence, "All these rights which you have claimed we deny to you, they do not exist; but we give you back all these rights and more too under the name of regulations"? Is it possible that that could have been contemplated? Or that they are to say to Great Britain, "You may go and seal as you please; you may exercise your right, which we say is your lawful right, to catch seals in the open sea"; and in the next sentence, "You must never do it". Is that a sensible arrangement or a sensible award to ask from any Tribunal? Is it possible that this is to be the result of what these two sides, these two nations, have been contesting about under the name of rights for the last three months?

How can it be a matter of vital importance to each of them, to deny and succeed in the denial of, or to assert and succeed in the assertion of certain rights, when as a matter of fact it is utterly indifferent whether the party claiming the rights has them or not, for he is perhaps worse off if he gets the rights than if he did not get them.

In answer to all these questions we say that the United States have no right. With regard to the seventh question, we say they cannot be better off than if they had no rights at all in.

The PRESIDENT.—You mean the right by award? You are able to give it by convention or agreement or regulation.

Mr. ROBINSON.—Oh, no doubt. I am not speaking of power. I am speaking of fairness. But is it sensible to say to Great Britain, "We award you all these rights, and then take them from you; and we not only take them from you, but order you to assist the United States in

preventing your subjects from exercising them". Is it possible that that can be a reasonable result of such a submission as the present? There must surely be some difference in the rights and regulations which are proper with property and which are proper without property. And upon what principle—because I am not now talking about power—upon what principle do you take away from a nation lawful rights which you have by your award decided to exist, except upon the principle that they cannot possibly be exercised without exterminating the seal race.

The PRESIDENT.—How many of the people are there on the English side who have an interest in the sealing besides the sealers—the furriers, for instance.

Mr. ROBINSON.—Oh none worth speaking of in the sense of money. That extends to this: The people who have an interest in the sealing besides the sealers are the Indians, who get to the extent of $30,000 a year. That is the whole story. We speak for the Indians as well as for the English interest.

I may not know exactly what the learned President meant. Did you mean citizens of the United States or citizens of England?

The PRESIDENT.—I mean people in England.

Mr. ROBINSON.—Furriers?

The PRESIDENT.—The furriers; yes. You speak for them quite as well as for the Canadian sealers?

Mr. ROBINSON.—Oh, certainly; we speak for them also.

The PRESIDENT.—I say that must be a cause for the interest that England takes in the preservation of seal life.

Mr. ROBINSON.—Oh yes; I suppose she has an interest in the preservation of seal life on that account.

Senator MORGAN.—What interest could England have in the preservation of seal life if her interests were only those of Canada?

Mr. ROBINSON.—Canadian interests are English interests. How can any body say the interest of Canada is not the interest of England?

Senator MORGAN.—I do not mean that. The interest of Canada seems to be to take the seals.

Mr. ROBINSON.—To preserve them also.

Senator MORGAN.—And the interest of the English seems to be to preserve them for the purpose of maintaining a traffic and industry that is based upon the seals.

Mr. ROBINSON.—With great deference, Mr. Senator, the interest of Canada is precisely the same. The interest of Canada is to keep up this industry which we have founded, and to preserve the fur-seals for the purpose of keeping up the industry. We have no wish to destroy the race. Why should we? But if you speak of the interest of any one else in England all that can be said is that England is here representing their interest; and that those furriers, almost to a man, have put themselves upon record under oath as saying that they do not wish pelagic sealing put down, that in their judgment it would be detrimental to their interest to have it put down, for reasons which are perfectly sensible and sound.

The PRESIDENT.—We are led to understand certainly that both parties, both England and the United States, have evinced their wish of preserving the race, whatever may be the motives and whatever may be the particular interests which are the reason of this submission of the treaty.

Mr. ROBINSON.—That is perfectly true, by proper regulations.

The PRESIDENT.—We certainly take it for granted that both parties are here in good faith, and earnestly desire the preservation of the fur-seal race.

Mr. ROBINSON.—Certainly.

Lord HANNEN.—But the argument on your side has been that the killing on the islands is excessive.

Mr. ROBINSON.—Yes.

Lord HANNEN.—And if excessive that it tends to the destruction of the race.

Mr. ROBINSON.—Yes, my Lord.

Lord HANNEN.—Now we are called upon to make regulations which are necessary for its preservation.

Mr. ROBINSON.—Yes.

Lord HANNEN.—How is it possible to do that upon the hypothesis that the killing on the islands is excessive? We are asked an impossible thing.

Mr. ROBINSON.—There is no question about that.

Lord HANNEN.—On that hypothesis, of course.

Mr. ROBINSON.—On that hypothesis. There is no possible means of carrying out your duties without taking into consideration the management of the islands. The thing is absolutely impossible.

The PRESIDENT.—I think you have got a very bad opinion of the mandate that has been given to us.

Mr. ROBINSON.—I have, with great deference. What I mean is that I am perfectly satisfied, and I venture to say every member of the Tribunal must agree with me in this, that there is but one way of making reasonable and proper regulations. It is by a Tribunal which has power to make regulations adapted to the varying circumstances of each year, and subject to modification and rectification from year to year.

Mr. Justice HARLAN.—Suppose it were true that pelagic sealing will result inevitably in the destruction of the race. Do you doubt our power then to prohibit it?

Mr. ROBINSON.—I think if it were absolutely true that with careful management on the islands, and with proper exercise of their rights on the islands, any, pelagic sealing to any extent would exterminate the race, then you could not prohibit it, because you have not got the power to prohibit.

Mr. Justice HARLAN.—Have we not the power to make such a regulation as will preserve the species?

Mr. ROBINSON.—Prohibition is not a regulation.

Mr. Justice HARLAN.—Is not pelagic sealing, under the hypothesis that has been made, a destruction of the species?

Mr. ROBINSON.—What hypothesis?

Mr. Justice HARLAN.—The United States contend that pelagic sealing will inevitably destroy the race. I do not say whether that is true or not. But if that be true would you not call it a regulation for us to prohibit pelagic sealing?

Mr. ROBINSON.—I should not most certainly. I say that with great submission, of course. When you ask me a question you understand I merely give you my opinion.

Mr. Justice HARLAN.—Oh yes; I understand that.

Lord HANNEN.—There must be some amount of pelagic sealing which would not destroy the race, and though it may be a difficult task, that is what we are called upon to try, what amount of pelagic sealing will not destroy the race.

Mr. ROBINSON.—Just let me ask—because I do not care to entertain assumptions which seem to me to be absolutely unfounded—is there any pretence in the evidence for saying that a reasonable exercise of pelagic sealing is inconsistent with the preservation of the seal race? Consistently with reasonable management on the islands, I say that it seems out of the question, and on the evidence there is no pretence for saying it.

The PRESIDENT.—It seems to be a question of measure. Even the other side admit of a certain amount of pelagic sealing to the Indians.

Mr. ROBINSON.—Certainly, they say that; and further, if you recollect, they say—I do not like to use the term nonsense before a Tribunal of this description; but surely it is all absurdity to say that no degree of pelagic sealing can go on consistently with the existence of the seal herd, when, as a matter of fact, pelagic sealing has gone on from time immemorial, and that it is only in the year 1886 that it began to do harm to the seal race.

Mr. Justice HARLAN.—How long has pelagic sealing gone on with schooners and shot-guns?

Mr. ROBINSON.—It has gone on since 1879, I believe. That is the year I gave.

Just let us inquire about this matter for a moment, because one likes to know when suggestions of this kind are made, and when the question seems to be pushed to extremes. Killer whales have been exterminating these animals, to the best of their ability, male and female, young and old, ever since they have existed. That is a thing that has to go on. You are not to protect the seal race for the exclusive benefit of the United States, or for anyone else.

The PRESIDENT.—If you could destroy the killer whales, nobody would object.

Lord HANNEN.—You would have no objection to regulating them, even if regulation amounts to prohibition.

Mr. ROBINSON.—I have no objection to regulating killer whales at all. I may say here, that although the suggestion has been made to the people on these islands that they should do something to protect the seals against the assaults of these killer whales, and that it could easily be done, they have never done it.

I venture to say this with regard to these questions that have been put, and the question as to what facts are unknown: We hear a great deal about surplus males. I have the strongest impression, without prophesying, that some day or other it will be found that there is no such thing in connection with this race as surplus males, properly speaking. I mean if the race is to be perpetuated, it will be found that there are no such things as surplus males. I say that when this thing comes to be ascertained, it will be found that, as in the case of other animals *feræ naturæ*, these males in all probability do not last on the rookeries for more than two or three years; that they correspond to all other animals of the same class; and that the notion that these sexes were produced by nature in equal proportions simply to allow men to kill off the surplus males, has no foundation whatever. I believe there are no such things as surplus males consistent with the due preservation of the herd at its best, simply because it is a provision made by nature for the selection of the best for the purpose, and the constant selection of the best for the purpose, that can be obtained. Otherwise, if nature did not intend that there should be a use for an equal number of each sex, nature would not have provided so. It is no use talking about not tampering with the law of nature. My learned friends

whole proceedings in the conduct of the business on the islands is a tampering with the laws of nature. You can do it with domestic animals, when you have the means of observing its effect constantly and regulating its operation, but not with animals *feræ naturæ*. As a matter of fact, I question whether there are such things as surplus males either in the seal race, deer, or any other polygamous wild animals.

I do not know how far it may be a test, but I think it may be a reasonable test as affording something in the way of illustration. Supposing the United States or England, I do not care which, owned the country in which these islands were, as well as having the ordinary rights of the sea; suppose a British subject or a United States citizen owned these islands, and suppose the country of which the owners were subjects were called upon to make such regulations as they thought reasonable with regard to the two rights, pelagic sealing and killing on the islands. I submit it would not be thought reasonable to prohibit pelagic sealing, to take away the rights of one class in order to transfer those rights to another class; but that they would endeavor to make such regulations as would ensure the due and reasonable exercise of both rights.

Then some question was spoken of with reference to numbers yesterday. I do not believe you can regulate this upon the question of numbers, because you can name no number that is to be destroyed in each year where the natural conditions may vary in each year. It may be right to kill 10,000 this year, and wrong to kill 5,000 next.

I have thought that the regulations proposed by our Commissioners were most reasonable in principle. In other words they say, under normal conditions a zone of so many miles is enough; but there may come an epidemic, or a great loss of seals by a storm, as has happened before, and you may find it unreasonable to kill half the number that year that you killed the year before. If so we will give you a double zone. In principle that is correct.

Here we are with equal rights; one a right to exercise our right of pelagic sealing; and you must first see what Regulations are necessary to prevent pelagic sealing from killing an unreasonable number of nursing-females, and when you have succeeded in doing that, the consequence of our exercising that right in a reasonable manner must take care of itself. You cannot provide for it otherwise. I am prepared to face the consequences either way. If the consequences of our exercising that right in a reasonable manner are only to enable us to kill a few, then we must kill a few; but if the consequences are to enable us to kill a good many, then we shall be able to kill a good many; and that will vary from year to year depending upon circumstances. You can only carry on pelagic sealing in calm weather, because the canoes can only float in calm weather; and if you have a rough season, you will have very little pelagic sealing, and we should kill very few. If we have a calm season, we should be able to kill more. But those are things that no human power can regulate. You can only attach to the exercise of our rights reasonable conditions; and, when you have done that, the effect upon other industries must take care of itself, whether it is little or much. What I mean is, that I do not understand how the consequences can affect the legality of other rights in any way; but the conditions must be reasonable.

When you attach such conditions that our rights may be reasonably exercised under those conditions, the consequence upon other indus-

tries must take care of itself; and it is idle to say that you must kill 40,000, or 20,000, or 15,000 or 35,000, in one year, or in proportion to another industry, because you cannot do it.

The PRESIDENT.—Do you say the same for land killing as for sea killing?

Mr. ROBINSON.—Yes; but it is a little more difficult, because from the land the animals disappear for a portion of the year. I am glad that the President has alluded to that, because my learned friends attach importance to the fact that they can kill with discrimination, and only kill the surplus males. But you could do the same with regard to rabbits by spreading your nets, catching the rabbits, and killing only the bucks. Just the same with regard to pheasants, killing only cock-birds; but it has never entered into any-body's mind that that would give special rights. Just the same with regard to salmon; you can take them at the heads of rivers, and even mark them, or take out and kill the male salmon. But nobody ever suggested that that gives any exceptional or peculiar right, until it came to be argued here.

Then, Sir, there is only one more subject on which I desire to say a very few words; and that is the interest of this particular portion of the Empire in this subject; namely, the Province of British Columbia. The interest of it to this Province is very, vital, serious and important. It is a small Province, having a population, including Indians and Chinese, coast and inland, of 97,000, or, at all even to, under 100,000. It is a Province, as you all know probably, which came very lately into the Dominion, I think in 1871, and which has only within the last few years been connected with this outer world to the East by the Canadian Pacific Railway.

Now, in this industry, with this small population, of which there are only 75,000 not living inland, we have employed a population of 1,083, Whites and Indians, and have invested in it a capital of somewhere about half a million of dollars, I think. We got last year, and I am only taking that as an average, some 49,000 skins; and for them we got some $600,000, for the price was $12 a skin. I suppose that the 1,100 people interested in that industry probably represents a dependence on it of 4,000 or 5,000, because they are, naturally, heads of families; and, in that view, it is very important to us. But it is more vital and important to us, I venture to submit, in this view; we are trying to settle that outlying and distant Province with a population which must be largely dependent for their living upon what they get from the deep sea; and if any restriction is placed upon the freedom of the sea in that part of the world which enables the idea to go abroad that the freedom of the sea means one thing in British Columbia and another thing in another part of the world,—that those pursuing their lawful occupation are liable to be interfered with and hampered in the pursuit of their industry in a way which they would not be liable to elsewhere, it must exercise a most deterrent effect upon the future of that Province; and we feel strongly the importance of it in that way.

The PRESIDENT.—Does that apply to any restriction of a close season?

Mr. ROBINSON.—Do not misunderstand me. I will explain what I mean; the inference I draw from that is this, and I believe it to be the true test of what Regulations, as I submit with all deference, ought to be made. Such Regulations only ought to be made as you would in your wisdom say that we ought to have agreed to. If such Regulations are made as we can explain to our people in our judgment, and the judgment of reasonable men, should have been entered into by them,

those Regulations will be assented to, and will cause no difficulty or injury to the Province, because they will be Regulations it is to their interest and to the interest of everybody else to see observed. But if Regulations are imposed by which lawful industry is hampered or interfered with, by which that part of the world differs from any other, and by which they are put under disadvantages nobody else suffers from, and restrictions that you cannot explain, except by saying that you have given to another Power all the rights that would be the rights of our own citizens anywhere else, you cannot but do serious injury to the welfare of that Province. For that reason we are supply interested in this question.

My learned friends have attempted to separate the interests of England from British Columbia. I venture to say the interest of one part of the Empire is the interest of the whole, and if England asserts that it is her interest she is the Power to judge, and we have a right to ask, as we do ask, from this Tribunal, with deference, that only such Regulations shall be made and such restrictions imposed as in their judgment are reasonable and consistent with the rights which upon the assumption of rights at all they would have found us to possess. I thank the Tribunal very much for the kindness with which they have listened to me.

The PRESIDENT.—And we have to thank you, and were very pleased to hear you again.

We will adjourn till the usual hour in the morning when we shall expect to hear Mr. Phelps.

[The Tribunal thereupon adjourned till Thursday, June 22nd at 11.30 a. m.]

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